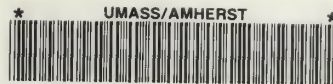


MASS. IGL.2:D40



312066 0282 4315 1

Designing and Constructing Municipal Facilities

LEGAL REQUIREMENTS
RECOMMENDED PRACTICES
SOURCES OF ASSISTANCE



STATE OF MASSACHUSETTS
COLLECTION
APR 22 1990
UNIVERSITY OF MASSACHUSETTS
DUNSTON CITY

**OFFICE OF THE
INSPECTOR
GENERAL**

Publication No. 16064-148-1000-9-25-89
Approved by State Purchasing Agent



Published by
MICHAEL J. CONNOLLY
Secretary of State

COMMONWEALTH OF
MASSACHUSETTS

JOSEPH R. BARRESI
INSPECTOR GENERAL

October 1989

894/511

#95 \$8.10

NOTICE

This manual supercedes the 1987 edition of Designing and Constructing Municipal Facilities. This edition has been expanded to include modular construction under the modular procurement legislation enacted in 1988, and it includes additional explanations and recommendations in response to frequently asked questions.

This edition also includes the Inspector General's recommended Code of Conduct for Public Employees as Appendix E.

Please discard any existing copies of the old Designing and Constructing Municipal Facilities Manual, as its contents are out of date.





THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE INSPECTOR GENERAL

ONE ASHBURTON PLACE • BOSTON 02108

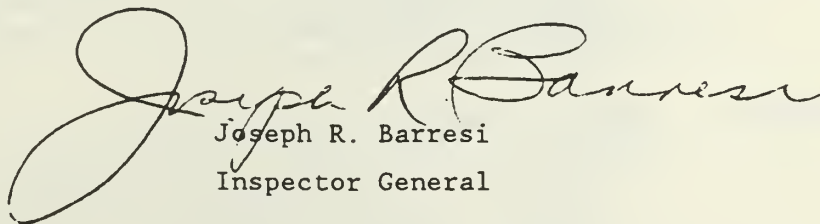
JOSEPH R. BARRESI
INSPECTOR GENERAL

TELEPHONE
(617) 727-9140

October 4, 1989

The Office of the Inspector General was established by the Massachusetts General Court in 1980 to prevent and detect fraud, waste, and abuse in public construction and other public contracts. As Inspector General I have always put as much emphasis on prevention as on detection, and so I am pleased to make available this manual on municipal construction. It is my hope and belief that this manual will assist municipal officials in undertaking public construction projects in an efficient and effective manner.

I welcome your comments on this manual, and I invite you to contact my Office if either I or my staff can be of any further assistance.


Joseph R. Barresi
Inspector General

CONTENTS

CHAPTER 1	PUBLIC CONSTRUCTION IN MASSACHUSETTS	1
	Purpose of This Manual	2
	What's Included and What's Not	2
	What's Required and What's Not	3
	How to Get Additional Copies	4
	How to Get Updates	4
	How to Get Additional Information	4
CHAPTER 2	THE DESIGNER SELECTION PROCESS	5
	Designer Selection: The Basic Steps	8
	Developing Detailed Designer Selection Procedures	19
	More Questions and Answers	21
CHAPTER 3	THE DESIGN PHASE	25
	Supervision of the Design Process	25
	The Study	26
	The Design	31
CHAPTER 4	CONSTRUCTION BIDDING	37
	The Standard Bidding Process	38
	Exceptions to the Rule	55
CHAPTER 5	THE CONSTRUCTION PHASE	59
	Supervising the Construction	59
	Changes	60
	Approvals	63
	Payment Procedures	64
	Project Closeout	65
	Contractor Evaluation	66
	Preventing Fraud and Abuse	67
CHAPTER 6	MODULAR CONSTRUCTION	68
	Procedures for Procurement of Modular Buildings	73
	Step 1: Prepare a Request for Proposals	73
	Step 2: Advertise for Proposals	82
	Step 3: Open and Evaluate Proposals	83
	Step 4: Negotiate and Award the Contract	90
	The Construction Phase	91
	More Questions and Answers	92
	Model Request for Proposals for Modular Construction	94
APPENDICES		
A	Directory of State Agencies	A-1
B	Statutory and Regulatory Citations	B-1
C	Standard Forms	C-1
D	Designer Selection Board Guidelines	D-1
E	Inspector General's Recommended Code of Conduct for Public Employees	E-1

CHAPTER ONE
PUBLIC CONSTRUCTION IN MASSACHUSETTS

Public construction is one of the essential functions of government. Cities and towns are responsible for many types of construction projects: schools, police and fire stations, municipal buildings, roads, utility systems, wastewater treatment plants, to name just a few. It is important that these facilities be properly designed and built, so as to serve the needs of the citizens and public employees who will use them. It is also important that these facilities be constructed efficiently and economically, so as to avoid unnecessary burdens on limited financial resources.

Here in Massachusetts, public construction is governed by a set of detailed requirements and procedures set forth in various State laws. Among these laws are the reforms enacted in 1980 as a result of the Ward Commission's landmark study of State and county building projects. The basic intent of these laws is perhaps best expressed in the opening section of the 1980 statute:

It is the purpose of this Act to provide the people of Massachusetts with a system of public construction which

- (1) results in buildings which are designed and constructed according to the highest professional and technical standards at a fair cost, in a reasonable and controlled period of time, and which serve the needs of their users;
- (2) operates under coordinated policies, in a timely, efficient, and professional manner, and is staffed by competent and trained professionals;
- (3) properly maintains and makes maximum use of the existing resources of the Commonwealth;
- (4) eliminates excessive costs, unwarranted delays and the use of outdated methods and materials;
- (5) requires that all participants be held accountable for their decisions and actions; and

(6) reduces opportunities for corruption, favoritism, and political influence in the award and administration of public contracts. [St. 1980, c.579].

Purpose of This Manual

The State's public construction requirements are complex and can be difficult to understand. This manual has been designed for use by local officials who are required to manage or oversee public construction projects and who may need a ready reference on the legal and procedural requirements of the bidding laws in Massachusetts. The manual provides an overview of the design and construction process in lay terms. It identifies those steps in the process which are governed by specific statutory requirements, and for those steps which are not governed by statute, it offers guidance and suggestions.

Reading this manual will not make you an expert in public construction. Any major public construction project should be administered by knowledgeable and experienced personnel. If your city or town does not have such people on the municipal payroll, hire them on a temporary basis. Proper supervision is perhaps the most important factor in having a construction project built properly, on time, and within budget. Skimping on adequate supervision to save money is a shortsighted and often costly decision.

What's Included and What's Not

This manual focuses on municipal projects, which in general include any construction project undertaken by any city or town; by any agency, board, or commission within a city or town; or by a regional school district. The generic term "awarding authority" is used throughout the manual to refer to the entity which has legal authority to undertake a project.

The manual does not directly apply to local housing authority projects, which are governed by a slightly different set of rules; the Executive Office of Communities and Development has issued various publications dealing with these types of projects. The manual also does not apply directly to projects undertaken by counties and independent authorities, as the rules for these types of governmental bodies differ somewhat from the rules applicable to municipalities.

It should also be noted that the manual focuses on general State requirements which apply to most municipal projects. Projects which are funded in part by a State agency, or by a Federal agency, may be subject to additional programmatic requirements established by the funding agency. Local ordinances, bylaws, and charters may also impose requirements which are unique to each municipality and which are obviously not covered here.

What's Required and What's Not

We have tried throughout the manual to clearly distinguish between required practices, which are mandated by law, and recommended practices, which you are free to accept, modify, or reject in light of each project's individual circumstances.

For required practices, we have included references to the appropriate chapters and sections of the Massachusetts General Laws (G.L.). If you have a question about a specific requirement, or if you are dealing with a particularly complex or unusual situation, take the time to read the relevant statute. Copies of the General Laws are available in most municipal libraries or from your municipal attorney.

You should also note that some provisions of the law may be subject to differing interpretations. Although we have made every effort to interpret these requirements in light of any relevant legislative history, case law, and administrative rulings, our interpretations represent the

opinions of the Office of the Inspector General, which do not have any formal status under law.

How to Get Additional Copies

Many municipalities have more than one person or agency involved in public construction. Additional copies of this manual can be purchased from the State Bookstore:

State Bookstore
Room 116
State House
Boston, MA 02133

Phone: (617) 727-2834

How to Get Updates

The Office of the Inspector General will periodically issue updates to this manual to reflect subsequent changes in the statutes and regulations. To be placed on the mailing list to be notified of these updates, complete the form at the end of this chapter and return it to the Office of the Inspector General.

How to Get Additional Information

As with all other areas of municipal operation, the best place for information on legal requirements is your municipal attorney. Further assistance may be available from one of the various State agencies involved with the public construction process. These agencies are listed in Appendix A.

MANUAL UPDATE SERVICE

To be notified of updates to this manual, send this form to:

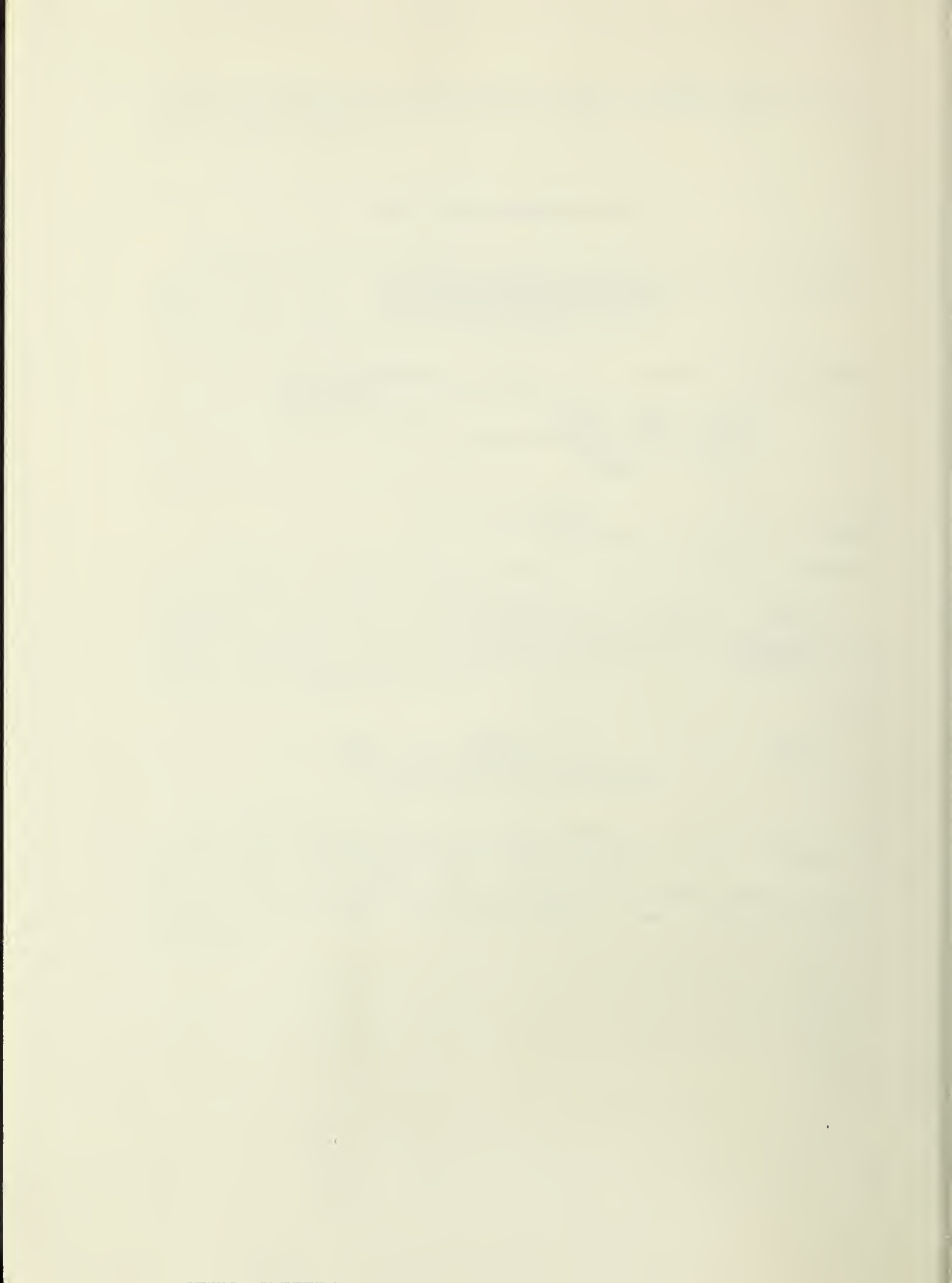
Manual Update Service
Office of the Inspector General
1 Ashburton Place
Boston, MA 02108

There is no charge for this service.

Name _____

Mailing _____
Address _____

City _____ State _____ Zip _____



CHAPTER TWO

THE DESIGNER SELECTION PROCESS

Construction projects typically require the services of architects, engineers, and other professional consultants to plan the work which will ultimately be carried out by construction contractors. The term "designer" is used to refer to the individuals or firms hired to do the architectural and engineering work for a project. As used in this manual, the term also includes consultants hired for preliminary planning (including the preparation of programs, feasibility studies, and environmental reports) and for construction supervision.[†]

Selecting qualified designers is one of the key ingredients in a successful construction project. State law sets out a process for selecting designers for most building projects which is based on recommendations made by the Ward Commission. This process tries to ensure the best possible designs for public buildings, while at the same time providing all designers with a fair and equal opportunity to compete for public business.

The designer selection statute which applies to municipalities is found in G.L. c.7, §38K, with additional requirements set forth in §38A¹ through §38N. This designer selection process, which is described in detail throughout the rest of this chapter, generally applies to any design service for any building project whose estimated construction cost is greater than \$10,000.^{††} Here are some further explanations to help you decide if a project is covered by the designer selection statute:

[†] See the section on "Who Can Perform Design Services?" later in this chapter for more information on who qualifies to do design work.

^{††} Contracts for the fabrication or installation of modular buildings which are procured according to the provisions of G.L. c.149, §44E, are exempt from the designer selection statute. [G.L. c.7, §38K]. The designer selection law does apply to the award of contracts for feasibility or other studies, surveys, tests, cost estimates, programs, or other design services needed to plan a modular building project. See Chapter 6 of this manual for a discussion of modular construction.

What is a design service? Design services include preparation of master plans, feasibility and other studies, surveys, soil tests, costs estimates or programs; preparation of drawings, plans and specifications, including schematics and preliminary plans; supervision or administration of a construction contract; and construction management and scheduling. [G.L. c.7, §38A½].

Does the designer selection statute apply to contracts for consultants who are not architects or engineers? Yes, if the consultants provide any of the design services listed above. Design services such as the preparation of a study evaluating alternatives and recommending solutions to a problem which involve work on a building may be undertaken by someone other than an architect or engineer. For example, a municipality may wish to hire an industrial hygienist to inspect school buildings for exposed asbestos. The industrial hygienist will generally prepare a study, survey, or program, and perhaps a cost estimate for the asbestos removal. These activities constitute design services for a building alteration or repair, hence the designer selection law applies to the selection of the industrial hygienist.

What is a building project? A building project is any project for the planning, acquisition, design, construction, demolition, installation, repair, or maintenance of a building. [G.L. c.7, §39A]. There is no statutory definition of "building," so judicial interpretations have relied on the common, everyday meaning of the word -- if it has a roof, walls, and foundations, and is used for living, working, or storage, it is a building. Nor does it matter if the building is very small; if the cost of the project is greater than \$10,000, the designer selection statute applies.

What if the building is only a small part of the project? It's still a building project. A \$1 million project to build just an outdoor ice skating rink would not be covered, but if it included a \$10,000 shed for the ticket taker, then the entire project would be covered.

The transportation exception. Buildings which are part of a highway or mass transit project are not subject to the designer selection statute. However, airport facilities, parking garages, and marine port facilities are subject to the designer selection statute. [G.L. c.7, §39A(f) and (g $\frac{1}{2}$)].

Utility buildings. Municipal buildings which are integral to a sewer or water project, such as wastewater treatment plants or pump stations, are subject to the designer selection statute. (Such buildings, when undertaken by an agency subject to the jurisdiction of the State Designer Selection Board, are exempt from DSB procedures, but this exemption does not affect municipalities.) [G.L. c.7, §39A(g $\frac{1}{2}$)].

What if I don't know the estimated construction cost? This often happens during preliminary planning. In these cases, the designer selection statute applies if the cost of the design service is \$2500 or more. [G.L. c.7, §38C(e)].

The Department of Labor and Industries (DLI) has jurisdiction over the Commonwealth's designer selection laws. DLI has the power to investigate grievances and complaints and to initiate enforcement proceedings in court. DLI can also provide information and guidance to awarding authorities who have particular questions about the designer selection process. [G.L. c.149, §44H].

Projects Not Subject to the Designer Selection Statute

For projects which are exempt from the designer selection statute, such as transportation and utility projects or projects which do not contain a building, there are no general State requirements governing the selection of designers. In some instances, these types of projects are subject to designer selection procedures established by State or Federal funding agencies. Where no other procedures have been established, the

designer selection process described in this chapter can and should be used, even though it is not legally required.

Construction work on such projects is still subject to the construction bid laws described in chapter 4 of this manual, even though the projects are exempt from the designer selection laws.

For projects below the \$10,000 threshold, it is appropriate to use the same contracting procedures as would be used for any small municipal service contract.

Modular buildings must be procured by following the statutory procedures set forth in G.L. c.149, §44E. The designer selection statute does not apply to contracts for the fabrication and installation of modular buildings, which must be awarded according to the proposal procedures discussed in chapter 6 of this manual. The designer selection law does apply to the award of contracts for feasibility or other studies, surveys, tests, cost estimates, programs, or other design services needed to plan a modular building project.

Designer Selection: The Basic Steps

This section describes the basic steps in the designer selection process for building projects. These steps are shown graphically in the chart on the next page.

Step 1: Adopt Written Procedures

Each awarding authority must adopt written procedures for selecting designers on projects subject to the designer selection statute. [G.L. c.7, §38K(a)]. Having the procedures set down in writing helps ensure compliance with statutory requirements and also fosters competition by providing useful information to potential applicants. These procedures must be adopted before you can select a designer for any specific project.

Most cities and towns have already developed and adopted such procedures. If your community has not already done so, you might want to do it now, even if you don't have any projects planned for the immediate future. Adopting your procedures now will avoid delays when you do start a building project. Once adopted, the same procedures can be used for any subsequent project.

The development and adoption of designer selection procedures is discussed in more detail later in this chapter.

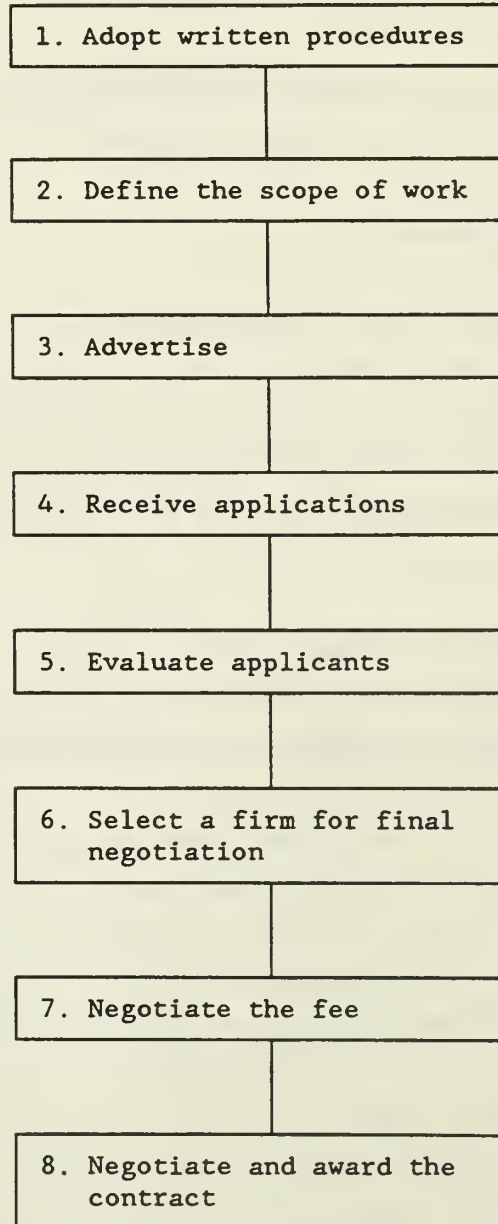
Step 2: Define the Scope of Work

The first step in hiring a designer is to have it clear in your own mind what you want the designer to do. Do you just want the designer to tell you what repairs need to be made to your 1910 fire house to keep it in good condition, or do you want a feasibility study of renovating it into a combination public safety headquarters and selectmen's meeting room?

The scope of proposed services should be reduced to writing. The scope of services in the contract that is ultimately awarded (see step 8) must substantially conform to what you write at this stage.

The awarding authority must also decide at this point whether it wants to set a fee for the proposed design service, which will be binding on the applicants, or whether it wishes to negotiate the fee. If the fee is to be negotiated, the awarding authority must establish a "not-to-exceed" limit before the applications are received and evaluated; this will set an upper limit on the fee negotiations. [G.L. c.7, §38G].

THE DESIGNER SELECTION PROCESS



If the scope of work includes the preparation of a feasibility study or program, there are restrictions on also including in the scope any portion of the subsequent design work. Chapter 3 of this manual contains a more detailed discussion of these restrictions.

Can we include design work on different facilities in one contract for design services? Yes. It is permissible to combine design work on different facilities or in different parts of one facility into one contract for design services. If you choose to do this, you must determine all of the services in advance, clearly state the full scope of services in the public notice, and identify the qualifications needed to perform all of these services.

Step 3: Advertise

A notice must be published in the Central Register inviting applications from interested designers. [G.L. c.7, §38D]. The Central Register is a weekly publication issued by the Secretary of the Commonwealth; it contains a variety of notices related to public construction projects in Massachusetts. Appendix C of this manual contains the necessary forms and information for publishing notices in the Central Register. The notice must be published at least two weeks prior to the deadline for receipt of applications.

In addition to the Central Register, design services for projects whose estimated construction cost exceeds \$25,000 must also be advertised in a newspaper of general circulation in the locality of the project. This notice must also appear at least two weeks prior to the deadline.

The published notice must contain the following information:

- Describe the overall project (including the estimated construction cost if known), and describe the scope of the specific designer services being sought and the timeframe within which the project is to be completed.

- If a program has already been completed, indicate when and where it is available for inspection. If no program is available, say so.
- List any specific qualifications required. Note in particular that State law requires a registered architect for the preparation of plans and specifications involving any building whose size exceeds 35,000 cubic feet. [G.L. c.112, §60L; see also the state building code, 780 CMR 127.2.1].
- Specify any categories of work where the designer must list the names of consultants which he or she plans to use. This is of importance on those projects where a significant portion of the work will be done by consultants to the designer and where the awarding authority will want to consider the qualifications of the consultants as well as the designer itself.
- If a briefing session will be held, indicate when and where. A briefing session is not required but is often useful on large or complex projects, where it provides an opportunity for potential applicants to ask questions and learn more about the project .
- Specify whether the designer's fee has been set by the awarding authority (specify the amount) or is to be negotiated.
- Indicate how to obtain application forms; where and when the completed forms should be submitted; and whom to contact for further information.

Step 4: Receive Applications

Each designer must submit an application using a standard form provided by the awarding authority. [G.L. c.7, §38K]. Many municipalities use the application form developed by the State Designer Selection Board for use on State projects (see Appendix C); others have chosen to develop their own. At a minimum, the applications must contain the following information [G.L. c.7, §38E(a)]:

- The name and address of the designer; if it is a firm, the names and addresses of the officers, directors, and owners.
- Names and certificate numbers of those officers, directors, and owners who are registered architects or professional engineers.

- List of all public projects undertaken in Massachusetts within the past five years. It is important to ask for the complete list rather than just selected examples, because selected examples could exclude projects on which there were problems.
- List of all current projects.
- If the applicant is a joint venture (two or more independent firms applying together), all information should be shown for each partner in the venture.
- Names and qualifications of consultants to be hired by the designer, for those categories of work specified in the public notice.
- Certification (except on feasibility work) that the applicant meets the statutory definition of a designer, as discussed later in this chapter.

We also recommend that you ask for the resumes of key staff who will be assigned to this project.

Finally, the application must contain a statement in which the applicant certifies that the information provided is correct, under penalties of perjury. [G.L. c.7, §38E].

One item which must not be included in the application is a fee proposal. The reasons for this are discussed in the next section.

Step 5: Evaluate Applicants

After the applications are received, they are evaluated by a designated municipal official or by a designer selection committee. (The choice of a single individual versus a committee is discussed later in this chapter.) The law requires you to treat all applicants uniformly and fairly. This includes asking for the same information from each applicant and applying the same criteria to each applicant. [G.L. c.7, §38K].

Here is a recommended list of criteria to use in evaluating the applicants:

Experience. Do the firm and the specific individuals proposed for the job have experience on projects similar to the proposed project?

Quality of work. Contact the owners of other projects on which the firm has worked and find out how well they did.

Public sector knowledge. If the scope of work includes preparation of plans and specifications and assistance during the bidding and construction stages, the firm should be familiar with Massachusetts public construction laws and procedures.

Professional registrations. If professional licenses are required for this project, make sure the firm has them.

Consultants. Review and rate the qualifications of key consultants who will be employed by the designer.

Capacity. Does the firm appear to have the capacity to undertake this project in a timely manner? Look at the size of the firm and the number and size of current projects to gauge this aspect.

Affirmative hiring goals. In some municipalities, the award of some contracts may be subject to affirmative hiring goals. Consult with your municipal attorney for further guidance in these cases.

Note that the recommended evaluation criteria do not include cost. One of the basic tenets underlying the State's designer selection statute is that the quality of service, not the cost, must be the determining factor. This is because design services generally represent only a small portion (ten percent or so) of the total cost of a construction project. Attempting to save money by cutting corners on the design fee is, to use an old but apt cliché, penny wise and pound foolish. The extra costs which can result from inadequate or deficient design work will far outweigh the meager savings achieved by selecting a less qualified but cheaper designer. The goal is to select the best designer available.

Evaluations must be based strictly on quality, and cost must not be allowed to influence the ratings. [G.L. c.7, §38K].

At least three finalists must be selected from among the applicants.[†] Once the finalists are selected, you may seek additional information from them or request them to appear before the selection body, provided that all finalists are treated equally. As an example, if one finalist is given the opportunity to make an oral presentation, all finalists must be given that opportunity. The finalists must then be ranked in order of qualification, and the reasons for the rankings must be set down in writing. [G.L. c.7, §38F(c)].

Here are some additional points to keep in mind concerning the evaluation process:

Open meetings. If a board or committee has been set up to evaluate applications, it is subject to the State's open meeting law. [G.L. c.39, §§23A-C].

Recordkeeping. A permanent file must be maintained for each design procurement, containing copies of public notices; applications received; evaluations, rankings, and the reasons for the rankings; and other relevant information describing the selection process. In addition, if the evaluations and rankings are done by a committee, the file must contain the recorded votes of the committee. [G.L. c.7, §38L].

Evaluations by DSB. Municipalities can request the State Designer Selection Board to review applications and select finalists for them. DSB has a large backlog of State projects, so municipalities considering this approach should contact DSB staff to determine the time which may be needed.

[†] If fewer than three applications were received, you should readvertise. If you again receive fewer than three responses, evaluate the responding firm or firms.

Step 6: Select a Firm for Final Negotiation

After the finalists have been selected, a designated municipal official chooses one of the finalists for fee and contract negotiation. This should almost always be the top-ranked finalist. In rare cases, the appointing official may have a valid reason to skip the top-ranked finalist and choose one of the other finalists for negotiation; the official should clearly document the reasons for such a decision in the procurement file. [G.L. c.7, §38G].

Step 7: Negotiate the Fee

If the awarding authority has already established the amount of the fee in advance of the competition, no fee negotiations are required and the contract is awarded to the finalist selected in step 6. In many cases, however, the awarding authority will have decided to negotiate the fee. Negotiations must begin with the finalist selected in step 6, who is asked to provide a fee proposal. If the proposal is acceptable to the awarding authority or can be negotiated to an acceptable level, and is within the not-to-exceed limit established in step 2, the contract is awarded to that firm. If a satisfactory fee cannot be negotiated after a reasonable period of time, negotiations with that firm are ended and the next highest-ranked finalist is asked to submit a fee proposal.

Fees must be expressed as a fixed dollar amount. [G.L. c.7, §38G(c)]. The contract can provide for equitable adjustments if the scope of services is changed. This means that if, as the contract proceeds, it becomes necessary for the designer to do more (or less) work than originally contemplated, the fee can be increased (or decreased). The adjustment is often determined by a formula set forth in the contract (for example, an hourly rate for principals or other employees). But if the amount of work (and thus the fee) is increased substantially, it will be necessary to award a new contract, based on a new scope of services.

In no case may the designer's fee be determined as a percentage of the construction cost. [G.L. c.7 §38G(c)]. This practice is illegal and invites projects which are larger and more expensive than you really need.

Step 8: Negotiate and Award the Contract

Each municipality should request its legal counsel to develop a standard contract for design services. Model contracts put out by the State Division of Capital Planning and Operations (DCPO) and by the American Institute of Architects can be consulted for guidance, but neither of these two documents completely fits the municipal situation. Once a standard contract is developed, it can then be used over and over again with only minor modifications needed for each project. Here are some particular points to consider in developing a contract document:

Scope. The contract must clearly define the scope of services to be performed, including a list of all deliverables and other work products to be produced by the designer. This scope of work must substantially conform to the scope published in the initial advertisement. It is not permissible to advertise for designers to do a small renovation project and then, during the negotiation process, change the project into the design of a major new building. If a significant change in the project's scope is required, the designer selection process must be started anew.

Key personnel. The qualifications of the designer's proposed project team, particularly the proposed project manager and other senior staff, should be a key factor in the selection process. To prevent the designer from substituting less experienced personnel after the contract is awarded, the contract should specifically list the names and time commitments (for example, if certain staff are expected to work full-time on the project) of the key personnel included in the designer's proposal.

Payment terms. Most designers, particularly on larger projects, will expect to receive periodic payments. It is preferable to link these payments to progress (such as the completion of designated milestones) rather than simply paying a certain amount each month. The contract should also specify who will bear the cost of redesigns if the plans are unsatisfactory or if the construction bids exceed the estimated cost or the available appropriation. In addition, the contract must prohibit the designer from receiving any extra payments for additional work which should have reasonably been anticipated by the designer. [G.L. c.7, §38H(j)].

Errors and omission insurance. Liability insurance, which protects the awarding authority in the event of errors or negligence on the part of the designer, is required on all design work other than planning studies. [G.L. c.7, §38H(f)]. The minimum amount of required insurance is 10% of the estimated construction cost or \$1 million, whichever is less. The awarding authority may choose to increase the requirement. Generally, the insurance is obtained by the designer, although on some larger projects, some awarding authorities may find it less expensive to obtain the insurance on their own. Naturally, a decision on who will pay the insurance premiums should be made before a final fee is negotiated. If you require that the designer obtain all or a portion of the insurance, the designer must provide you with a certificate of insurance coverage prior to award of the contract. You may also require that a consultant employed by the designer obtain insurance, and, if you do, the consultant must provide a certificate of coverage prior to the consultant's employment.

Other statutory conditions. State law contains several certifications and requirements relating to non-collusion in the submission of proposals and to financial reports which the designer must file. [G.L. c.7, §38H(e)]. These provisions must be included in the design contract. Note also that any person contracting with a municipality

must certify in writing that he or she has complied with State tax laws. [G.L. c.62C, §49A].

Ownership of documents. A provision giving ownership of the design documents to the awarding authority can be useful, particularly in cases where the contract needs to be terminated.

Finally, the name of the designer awarded the contract must be published in the Central Register; use the "Contract Award" form in Appendix C for this purpose.

Developing Detailed Designer Selection Procedures

The State Designer Selection Board has issued guidelines for municipal designer selection (see Appendix D). These guidelines, which are based on the selection process used for State projects, have been used by most communities as the basis for their own designer selection procedures. Municipalities may deviate in minor respects from these guidelines, provided that the local process adheres to the purposes and intent of the designer selection statute. [G.L. c.7, §§38A½ - 38N]. Exactly how much deviation is permitted at the local level is a matter subject to judicial interpretation. If you do wish to deviate from the guidelines, we recommend that you consult with your municipal attorney.

In tailoring the DSB guidelines for local use, particular attention should be given to the following areas:

Applicability. Specify whether the procedures will be used for only those building projects covered by the designer selection statute, or whether they will also be used for other types of municipal construction. Specify whether all municipal agencies and boards are subject to the procedures, or whether some agencies (for example, a school committee) will be subject to other procedures.

Advertising. The advertising requirements discussed earlier in this chapter are mandatory. It would also be useful to potential applicants to specify in the procedures the names of the newspapers where the notices will be published.

Selection of finalists. The procedures must specify who will have responsibility for reviewing the applications and selecting and ranking the finalists. On State projects, a standing committee, a majority of whose members are trained architects and engineers, performs this function. The use of a committee is not required at the local level, although we do recommend its use for larger projects, such as those costing \$100,000 or more. Having a committee guards against favoritism or personal bias which can result when a single person is asked to make a subjective judgment, and having trained professionals on the committee in addition to lay people helps ensure that evaluations take account of standards and experience in the design profession.

If a committee is to be used, the procedures should specify who will appoint it and whether it will be a standing committee or an ad hoc committee selected for each project. Also note that committee members who have financial or other connections to a design firm may not participate if that firm is an applicant. [G.L. c.7, §38F(e); G.L. c.268A].

Selection of winner. The procedures must specify who will select the winning applicant from among the finalists and conduct the fee and contract negotiations. This might be the city or town manager, the head of the public works department, or perhaps even the board of selectmen itself. It is important to designate clearly who has responsibility for selecting the winner, as distinguished from the responsibility for selecting the finalists.

Emergencies. The law permits expedited selections in case of emergency. [G.L. c.7, §38J]. An emergency is defined as a situation

where expedited action is necessary to protect the health or safety of people or to meet deadlines imposed by a court of law or a federal agency. Your procedures must specify the special procedures to be used in an emergency and who will have the authority to invoke them. Note that not every urgent situation meets the statutory definition of an emergency (see page 55).

Formal adoption of the procedures must be accomplished through appropriate action at the municipal level, as determined by your local ordinances or bylaws. Your municipal attorney can provide advice as to what specific actions are required.

More Questions and Answers

Here are some frequently asked questions about the designer selection process:

Who Can Perform Design Services?

Design services such as the preparation of programs and feasibility studies, construction management, and construction scheduling may be performed by any person or firm experienced in providing such services. Other design services generally require the participation of registered architects, landscape architects, or engineers. In such cases, if the designer is an individual, he or she must be registered in the appropriate discipline. If the designer is a partnership, a majority of the partners must be so registered. If the designer is a corporation, the chief executive officer, the person in charge of the project, and either a majority of directors or a majority of the ownership interest must all be registered.

Can We Use Municipal Employees to Do Design Work?

Using full-time municipal employees to perform design services which fall within the scope of their normal duties is perfectly legal and appropriate, provided the employees are qualified. If you anticipate this situation, your designer selection procedures should assign clear responsibility for reviewing and evaluating these employees' qualifications, using the same criteria as would be applied to outside firms. Where the employees are found to be qualified, you need not conduct an open competition.

Can We Use Volunteer Designers?

It depends on the situation. The designer selection law governs the awarding of contracts to designers for work on building projects. If the designer is receiving anything in return -- whether it be a nominal fee or even some non-monetary consideration, such as being promised the "inside track" on future work -- it is a contract situation and the designer selection process would apply. Of course, a designer who is selected through the statutory process is always free to waive or reduce the fee during fee negotiations.

Where a designer offers services as a true gift to the locality, with no expectation of receiving anything in return, it can be argued as a legal matter that the designer selection law does not apply. But we strongly discourage such arrangements, because the municipality may have much less control over the project and, if the design work turns out to be unsatisfactory or deficient, you may have difficulty in recovering damages from the designer. Again, keep in mind that the designer's fee is a relatively small part of the total project, so the objective should be to get the best designer, not the cheapest.

A different situation exists with respect to preliminary planning done by volunteer committees, who in effect are acting as unpaid town employees. There is no legal prohibition against such an arrangement, but

as with the use of in-house staff, it is important to review the committee's qualifications -- the best of intentions does not necessarily translate into the ability to conduct a complex feasibility study. In many instances, the quality of volunteer committees could be greatly enhanced by at least supplementing their efforts with competent, paid professional assistance.

Can We Ask for Fee Proposals?

No. Municipalities have two choices in handling fees: either (1) set the fee in advance, or (2) determine (before you advertise) a not-to-exceed limit, obtain a fee proposal from the selected finalist, and negotiate a fee which does not exceed the limit. Soliciting competing fee proposals from all designers or a few of them is prohibited.

The Ward Commission's report contains an extended discussion of various ways in which fees might be utilized in selecting designers, and concludes as follows:

. . . [T]he goals of the designer selection process should not include minimizing designers' fees. Making fee part of the selection process will not save the taxpayers' money. Rather the practice is likely to increase the ultimate costs of the public building system due to a reduction in design quality, while at the same time offering no actual benefit insofar as reducing the opportunities or occurrence of corruption. To restate the goal the Commission finds appropriate, it is to obtain the best possible design services available within a given fee parameter or limit, and to do so in a way that leaves all participants in the process accountable for the part they played, that places ultimate responsibility in one, focused place, and that allows all parties -- the public, the media, the losing designers, supervising officials, and any future investigative bodies -- to understand the particulars of any selection decision after that decision was made.[†]

[†] Special Commission Concerning State and County Buildings, Final Report, December 31, 1980; v.7, p.228.

In short, the fee for design services cannot be a factor in the selection process.

Can We Give Preference to Local Firms?

No. But you may require that the designer be available to attend local meetings or be present at the construction site. In such cases, the requirements should be included in the scope of services.

Can We Use Standing Lists?

No. A "standing list" refers to the practice of soliciting and reviewing applications for broad categories of projects in advance so as to create a list of qualified firms. When a particular project arises, a name is then selected from the list without further advertising or solicitations. In the Inspector General's opinion, the use of standing lists is illegal; there must be a separate solicitation for each project. The only exception would be emergency situations, where the use of standing lists could expedite the selection process.

This proscription against standing lists does not, however, prohibit a municipality from maintaining lists of those firms who have expressed interest in doing particular types of work and sending copies of solicitations to those firms when projects arise. Such solicitations would supplement, not replace, the required public advertising. This technique is highly recommended, as it can often result in greater response and greater competition, particularly for smaller projects.

CHAPTER THREE

THE DESIGN PHASE

As soon as someone has been selected to perform design services and a contract has been signed, work can begin.

Supervision of the Design Process

The appointment of a qualified, professional designer does not end the involvement of the awarding authority. It is critical to the success of a project to appoint a project manager or project coordinator to monitor and oversee the project beginning with the design process. The project manager's major duties with respect to the design work might include the following:

- negotiating the designer's contract and any subsequent amendments;
- monitoring the designer's progress, and working with the designer to resolve any problems hindering the project's completion;
- ensuring that users and others affected by the project are properly consulted;
- making decisions on design options presented by the designer, or, where decisions need to be made by others, seeing that the decisions are made and communicated to the designer; and
- reviewing and approving invoices for payment submitted by the designer.

Where a project is under the supervision of a committee or board, such as a town building committee, it is still important to designate one person to coordinate all communications with the designer. It is obviously undesirable to have several different people giving instructions to the designer.

In addition, the project manager should attend to the many other tasks which are required to complete a project but which may not be within the scope of the designer's responsibilities. These might include site acquisition and relocation efforts; working with legal counsel to draft the construction contract and related documents; analyzing insurance options for the construction phase; ensuring that project financing is available; and assisting the project's users in preparing for a smooth transition.

The Study

The design work on a construction project typically begins with a study phase. The study phase addresses a series of planning issues and questions, among which are the following:

PROGRAM: The program defines the specific functions and requirements which the proposed project must meet. For a small project, it can be very brief, but for major projects it will be much more detailed. How many people will use a facility, what functions will be carried on, how much space is needed for those functions, what special equipment or construction is needed -- these are the types of questions which a program must answer.

ALTERNATIVES: What are the available alternatives for meeting the functional requirements and what are their relative costs and benefits? This might include, for example, an analysis of new construction versus renovation or a review of different sites.

SURVEYS AND FIELD TESTS: Some tests may be conducted during the study phase to obtain more reliable data on the cost and feasibility of various sites or design alternatives.

ENVIRONMENTAL IMPACTS: What are the expected impacts on the environment, and how can negative impacts be mitigated? For some

projects, an environmental impact study will be required under State or Federal statutes.

COSTS AND FINANCING. How much will the project cost to build? How much will it cost to operate? Where will the money come from?

The content and focus of a specific study will, of course, depend on the project under consideration. In addition, these issues and questions may be addressed in a single study or in a series of progressively more detailed studies. A good source of more detailed information on the study process is a booklet prepared by DCPO entitled Guidelines for Studies of Building Projects Prepared for State Agencies, Building Authorities and Counties.

Is A Program or Study Necessary?

As a practical matter, yes. There is no legal requirement telling you precisely how detailed the study or program must be, or who must approve it, but keep this in mind: when you advertise for the designer for the final design, you are going to need to know enough about the project to write a scope of services for the final design work and to set a lump-sum fee. If you haven't figured out the approximate size of the new building, or settled on the most cost-effective alternative (a new wing on the library, or a new building) -- in short, if you haven't done a program and study -- it will be virtually impossible on a project of any significant size to select an architect to work on schematics and final design in compliance with the law.

Who Should Conduct the Study?

Studies are typically conducted by municipal officials, by volunteer citizen committees, by professional consultants, or by some combination of the above. Two considerations to keep in mind:

Make sure the users are involved. The needs and requirements of those who will be using the proposed facility should be clearly documented during the study. Now is the time to discover that the Fire Department plans to buy a new truck five feet longer than the current trucks, not after the construction plans for a building that is five feet too short have gone out for bid.

Make sure you have the necessary expertise. Many aspects of a study, such as the development of reliable construction cost estimates, require professional expertise. The use of an outside consultant is strongly recommended when the local officials or advisory groups do not possess that expertise.

There is a temptation to save money by not hiring an outside consultant, even when additional expertise is clearly needed. Such an approach is ill-advised. The cost of a proper study is very small in comparison to the total cost of a construction project. In the long run, the problems created by inadequate planning can cost far more than the study.

Whenever an outside consultant is to be hired, the designer selection process described in chapter 2 must be followed.

How Long Should the Study Take?

As long as it takes. There should be no arbitrary time limit on the planning process. A project should never proceed beyond the planning stage until there is agreement on what will be included, how much it will cost, and how it will be financed. The emphasis should be on ensuring that the project is well planned, not on how quickly the planning can be gotten out of the way.

In particular, the actual design phase should not begin until the awarding authority has explicitly approved a program for the project.

This program statement should be in writing, and it should reflect the decisions made by the awarding authority during the study phase.

Can We Use the Same Designer for the Study and for the Subsequent Design?

Usually not. A consultant hired during a study phase is prohibited by statute from continuing into the final design. [G.L. c.7, §38H]. Thus, a contract which calls for the architect to provide analyses of the awarding authority's needs, look at financial feasibility, study prospective sites (all elements of the study phase) and then go on to design the facility would violate the law.

The intent of this statute is to ensure that the study results will be impartial and objective and to prevent a consultant from inflating the scope of a project so that he or she can benefit from higher design fees in subsequent phases. There are two exceptions to this rule:

Small repairs. The restriction does not apply to the repair of existing buildings and equipment, where the total design fee (study and final design) does not exceed \$25,000. [G.L. c.7, §38H(d)].

Independent review. The restriction does not apply if the awarding authority has the study results reviewed by a knowledgeable and competent individual or firm with experience designing similar projects. The reviewer must be independent, with no connection with either the study consultant or the awarding authority and with no vested interest in the study results. The reviewer must certify that the study was reasonable and adequate. [G.L. c.7, §38H(i)]. The review of a State agency involved in overseeing or approving a project may satisfy this requirement, if the agency has staff with the professional qualifications needed to evaluate the study and if the State agency review includes all the major findings of the study. As of 1989, the School Building Assistance Bureau and the Executive Office of Energy Resources were not equipped to do an independent review within the meaning of the designer selection law. Check

beforehand with the Department of Labor and Industries if you are considering reliance on an independent review by any other State agency.

Generally speaking, reliance on an independent review to certify the reasonableness of a study is only appropriate and cost-effective on smaller projects. The cost of an independent review should first be estimated by consulting with knowledgeable staff or soliciting estimates from at least three potential reviewers. If the estimated cost of the independent review itself is more than a few thousand dollars, you may well be better off not using the feasibility designer for the subsequent design work, and instead following the designer selection procedures to select another designer for the subsequent work.

If you want to consider using the independent review option, you must state in the initial advertisement for design services that the feasibility designer may, subject to an independent review, go on to perform the final design. You must also set separate fees for the feasibility phase and the final design phase.

How should we choose an independent reviewer? It is not necessary to follow the designer selection procedures to select an independent reviewer, but it is permissible to do so. The cost of an independent review should be relatively small, well under the \$10,000 threshold recommended by the Inspector General for formal competition for selecting consultants under the proposed Uniform Procurement Code. A prudent procedure is, first, to define the scope of the reviewer's services and the reviewer's qualifications, then to solicit proposals from at least three qualified reviewers, either by telephone or in writing. Alternatively, you may advertise for proposals. You should choose the most advantageous proposal, taking into consideration both qualifications and price.

The Design

During the design phase, the functional requirements established during the study phase are translated into an acceptable architectural and engineering design. Typical tasks included in the design phase include the following:

- Surveys and field tests to provide additional information about conditions at the site. The extent of this item will depend in part on the amount of field work done during the study phase.
- Additional consultations with the project's users, with abutters, and with other affected individuals and groups.
- Preparation of sketches and schematic drawings, including site plans, floor plans, and facade drawings, which present a clear idea of what the proposed project will look like.
- Analysis of major building components, including foundations, structures, electrical systems, and heating, ventilating, and air conditioning (HVAC) systems.
- Preparation of final plans, specifications, and other bid documents. The plans are the construction drawings, and the specifications are the written materials which describe such things as the construction techniques to be used and the quality of materials to be furnished.
- Updated project cost estimates, based on the final plans and specifications.

On major projects, the preparation of the final plans and specifications requires a significant amount of time and effort. As a result, the design phase on major projects is often divided into three sub-phases: schematic design; design development; and preparation of final plans and specifications. The schematic phase provides a time for the designer to develop, and for the awarding authority to review and approve, the various architectural and engineering concepts. Once the major decisions have been made, the designer can then proceed into the detailed design development and the preparation of the final plans and specifications.

Energy System Life-Cycle Cost Estimates

Projects which will have significant energy consumption can benefit greatly from life-cycle cost estimates prepared during the preliminary design. Life-cycle cost estimates allow different alternatives (such as the type of heating system to be used) to be compared not just on the basis of their initial capital cost, but on the basis of their total cost -- including energy consumption -- over the life of the project.

Energy system life-cycle cost estimates are required by State law for the following categories of projects:

- new buildings, where the estimated construction cost is greater than \$100,000
- additions to existing buildings, where the increase in gross floor space is at least 10% and the estimated construction cost is greater than \$100,000
- modification or replacement of an energy system in an existing building, where the estimated cost is greater than \$25,000. [G.L. c.149, §44M].

For these categories of projects, summaries of the life-cycle cost estimates must be filed with the State Board of Building Regulations and Standards and with the State Secretary of Energy Resources prior to the preparation of plans and specifications. The awarding authority may not advertise for construction work, nor may a building permit be issued, until the Secretary of Energy Resources has approved the estimates.

Where energy costs will be a significant factor in a project, the development of life-cycle cost estimates may very well be needed during the study phase to assist in the evaluation of alternatives.

Avoiding Restrictive Specifications

In preparing the specifications for equipment and materials to be used in a construction project, the designer must seek to avoid "proprietary" specifications which allow only one brand to be used. State law requires that, in general, specifications be written so that they can be met by at least three manufacturers. [G.L. c.30, §39M]. If it is necessary to be more restrictive, the reasons must be documented.

Bidding documents which specify specific brands must also contain an "or equal" clause. This allows the contractor to supply an item from another supplier as long as its performance (in terms of quality, durability, appearance, strength, design, and function) is equal to the specified brands.

How Do I Bid a Job If I Don't Know the Exact Quantities of Everything?

Use estimated quantities. For example, if you're bidding the repair of potholes in town streets (a c.30 contract), estimate the number of cubic yards of bituminous concrete you will need, and require bidders to submit both a unit price and a total price based on your estimate. It is not permissible to solicit only unit prices and base the contract on the lowest unit price, for two reasons. First, the prices offered by bidders may depend on the quantity involved, so all bidders should have the same estimate on which to base their bid. Second, where there are several items to be included in the bid, the bottom-line bid price will depend on the awarding authority's estimated quantity for unit price items. The contract must be awarded to the bidder with the lowest total price, based on the estimated quantity or quantities. Then, when the work is performed, actual payments will be based on the actual quantity and the unit price in the bid.

Where the cost of unit price items is significant, it can be useful in some situations to include in the contract a requirement that the unit price be renegotiated if the actual quantity exceeds the estimated

quantity by a specified amount. Such a provision recognizes that a contractor's unit price cost is often lower for larger quantities and would allow the awarding authority to benefit from the savings.

Additional Requirements on Certain Building Projects

If the project is going to be bid under the provisions of G.L. c.149, §44A, which generally applies to construction projects whose estimated cost exceeds \$25,000 and which includes work on a building,[†] certain additional legal requirements must be kept in mind during the preparation of the plans and specifications.

Allowances. Allowances are sometimes used in construction bidding to cover items for which the design has not been completed. Bidders are told to include an arbitrary amount for the item, which will be adjusted later through negotiation with the successful bidder. The use of allowances in c.149 contracts is strictly prohibited. If design work is not complete on a particular item, it must be deleted from the scope of work and bid under a separate contract at a later date. [G.L. c.149, §44G].

Alternates. Alternates are options which the awarding authority includes in a bid package for which the bidders must submit separate prices. The awarding authority reserves the right to select or reject the optional work, based on the prices received. For c.149 contracts, alternates can be included in the bid package only if they are ranked numerically in order of priority. Then, when evaluating the bids, a specific alternate can be selected only if all of the higher-ranking alternates have also been selected. [G.L. c.149, §44G].

[†] See chapter 4 for a more detailed discussion on determining whether a project must be bid under c.149.

Contractor certification category. During the c.149 bidding process, the awarding authority will need to specify the certification category for the general contractor. See chapter 4 for a list of the standard certification categories and a discussion of how they are used. If your project will require the use of a certification category which is not on the standard list, you will need approval from DCPO. This should be discussed with DCPO as early in the design process as possible.

Filed subbids. The filed subbid process, which is described in detail in the next chapter, applies to the following categories of work if performed under c.149 contracts:

Roofing and flashing	Metal windows
Waterproofing, damp-proofing and caulking	Misc. and ornamental iron
Acoustical tile	Lathing and plastering
Tile	Marble
Resilient floors	Terrazzo
Painting	Glass and glazing
Heating, ventilating and air conditioning (HVAC)	Plumbing
Masonry work	Electrical work
	Elevators

If the estimated value of work in any of these categories is greater than \$10,000, the work must be bid separately under the filed subbid procedures.[†] To accommodate the filed subbid process, the designer must prepare separate plans and specifications for each filed subbid category. [G.L. c.149, §44F(1)].

Exception: where one of the filed subbid categories constitutes the predominant work on a project (for instance, a project to repair the roofs on town buildings), the work may be included as part of the

[†] The awarding authority may combine marble, tile, and terrazzo into a single subbid category, provided that the subbidders are required to show on their bid forms the amounts for each category separately as well as the total.

main contract and need not be segregated into a separate contract for filed subbidding. [G.L. c.149, §44F(3)].

Minimum scale. Plans prepared for c.149 contracts must have a minimum scale of 1/8 in. = 1 ft. This requirement does not apply to site plans. [G.L. c.149, §44B(1)].

CHAPTER FOUR

CONSTRUCTION BIDDING

The bidding process described in this chapter forms the cornerstone of the Commonwealth's public construction system. It is intended to ensure that the public pays a fair price for its buildings and public works; that only qualified contractors are selected for public jobs; and that competition for public contracts is fair and open and not subject to favoritism and abuse.

The law provides for severe civil and criminal penalties for those public officials who deliberately attempt to thwart the process by failing to publicly advertise for contracts or by splitting contracts into smaller contracts for the purpose of evading the statutory requirements (G.L. c.149 §44J). Contractors should also be aware that contracts awarded in violation of these requirements may be held unenforceable by a court, whether or not the contractor was acting in good faith.

If even part of the subject matter of a contract falls under the construction bidding laws, a municipality cannot avoid the bidding requirements by calling the agreement something else or combining the construction with other services. For example, it would not be legal for a municipality to contract with a developer on a no-bid basis to construct a building on private land to be leased by the municipality for use as a school. Because this project involves the award of a contract by a municipality for the construction of a building, the designer selection laws and the construction bidding laws must be followed. Nor could a municipality legally enter into a no-bid agreement with a contractor to clean up hazardous waste on municipal land in exchange for conveying the land to the contractor. A hazardous waste clean-up contract must be awarded through the competitive procedures outlined in the public bidding laws.

The Department of Labor and Industries (DLI) has jurisdiction to enforce the Commonwealth's construction bidding laws. DLI has the power to investigate grievances and complaints and to initiate enforcement proceedings in court. DLI can also provide information and guidance to awarding authorities who have particular questions about the bidding process. [G.L. c.149, §44H].

The Standard Bidding Process

The Commonwealth has two distinct construction bidding statutes, and for every construction project it is essential to determine which of the two statutes will apply.

G.L. c.30, §39M governs all municipal contracts for construction, reconstruction, alteration, remodeling, or repair estimated to cost more than \$5,000 which do not include work on a building. These contracts are known as public works projects. Public works projects include not only the construction and repair of roads, bridges, water mains, sewers, and the like -- sometimes called "horizontal construction" -- but also work on any improvement to public land. For example, c.30, §39M, has been interpreted by the Massachusetts Appeals Court to apply to a contract for the operation of a municipal landfill, including such work as removal of waste materials, grading, erosion control, and other forms of improvement and maintenance.

Chapter 30, §39M, also governs contracts of \$5,000 to \$25,000 for construction, reconstruction, installation, demolition, maintenance, or repair work on a building.

The public works and the building contracts which fall within this statute are referred to in this manual as c.30 contracts.

G.L. c.149, §44 governs all contracts for the construction, reconstruction, installation, demolition, maintenance, or repair of a building at an estimated cost of more than \$25,000. These contracts are referred to in this manual as c.149 contracts.

The construction bidding laws also apply to contracts for purchases of materials to be used in construction, including materials to be installed in buildings. For example, contracts for bituminous concrete must be bid according to c.30. Contracts for the installation of such materials as carpeting, carpet tiles, and demountable wall partitions must be bid under either c.30 or c.149, depending on the estimated cost.

Do we have to bid maintenance contracts? Yes, if the estimated cost of the contract is more than \$5,000. Both c.30 and c.149 apply to contracts for installation, maintenance, or repair as well as construction. Such projects as painting, plumbing repair, and asbestos removal are subject to the requirements of these statutes.

Repair contracts must be bid based on detailed specifications prepared for a particular project. Bids for maintenance materials and services, on the other hand, can generally be bid on an annual basis. An invitation for bids must specify each and every type of material and service sought and the maximum amount of material or work to be provided under the contract. It makes sense, for example, to award an annual contract for interior painting for all of the public school buildings in a municipality, using an estimated amount of painting based on what has been required in previous years.

Contracts of \$5,000 or less. Contracts of \$5,000 or less are not subject to either of the bidding statutes listed above, and are also exempt from many (but not all) of the other requirements discussed in this chapter. Such contracts can typically be awarded through the municipality's normal procedures governing small procurements.

Here are some additional considerations to keep in mind when determining which of the two construction bidding statutes, c.30 or c.149, applies to a specific contract:

What is a building? Although there is no specific definition of the word "building" in the statutes, court rulings have clearly indicated that the word is to be taken in its common and ordinary sense. If a structure has walls and a roof and encloses space which is to be used for some purpose, it is a building. Size is irrelevant, as is the fact that it may be part of a larger non-building project. If a building is included in the project, and if the total contract cost is greater than \$25,000, the contract must be bid under c.149.

The pumping station exception. If a sewer or water supply project includes buildings whose sole function is to house pumps and related equipment, the project may be bid under c.30. [G.L. c.149, §44A(2)].

If there is any doubt as to whether a contract must be bid under c.30 or c.149, the issue should be discussed with your municipal attorney or DLI early in the design phase.

The requirements and procedures discussed below apply to both c.30 contracts and c.149 contracts unless otherwise noted.

Step 1: Prepare Bidding Documents

The bidding documents are the package of materials distributed to interested bidders which form the basis for their bids. There are three major components of the bidding document package:

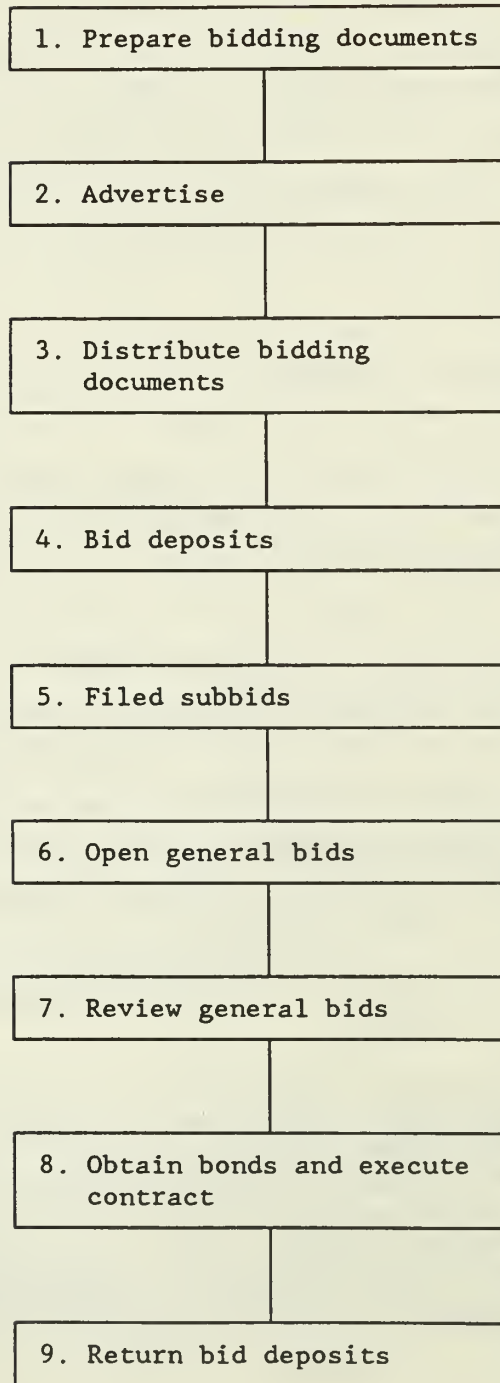
Plans and specifications. These are the construction drawings and related materials, prepared by the project designer, which explains in detail how the project is to be built.

Standard forms. On c.149 projects, the package must contain several standard forms which must be completed by the bidder. This includes a form for submitting general bids, a form for submitting subbids, and a contractor qualification update statement. Copies of these forms are in Appendix C. There is no prescribed form for submitting c.30 bids; awarding authorities can either use the c.149 form or develop their own. All c.30 bids must contain language which is essentially the same as that in the last paragraph of the c.149 general bid form, certifying that the bid has been made without collusion or fraud.

Terms and conditions. The package should also contain the various business and legal terms and conditions to which the contractor must agree. Awarding authorities may develop a standard construction contract, which can then be used repeatedly with only minor modifications for each individual project. The Division of Capital Planning and Operations (DCPO) has its own standard contract for use on State projects; this can be used as a guide in developing a municipal contract, although some changes are needed to reflect the slightly different legal requirements at the municipal level. As with any legal document, the assistance of an attorney should be obtained when developing a standard construction contract. By necessity, the contract will be a lengthy and complex document, and a discussion of all the terms and conditions is beyond the scope of this manual. However, here is a list of some particular provisions of which you should be aware:

Employment: The contract must contain various provisions relating to wages and employment conditions, including the payment of prevailing wage rates as set by DLI; hiring preferences for veterans and residents of Massachusetts; and worker's compensation coverage. [G.L. c.149, §§26-37]. Note that the awarding authority must obtain the prevailing wage rates applicable to the project from DLI in advance of the bidding process.

THE CONSTRUCTION BIDDING PROCESS



Adjustments: The contract must require the awarding authority to adjust the price if field conditions differ substantially from the plans or if work is suspended or delayed by the awarding authority for 15 days or more. [G.L. c.30, §§39N-39O]. The contract should also include terms governing the adoption and pricing of change orders.

Performance and payment bonds: The contract should include the requirements for performance and/or payment bonds, which are described further under step 8.

Foreign corporations: Contractors and subcontractors which are incorporated outside of Massachusetts must certify compliance with certain corporation laws. Note also that the awarding authority must notify the Secretary of the Commonwealth and the Department of Revenue whenever a contract or subcontract is awarded to an out-of-state corporation. [G.L. c.30, §39L].

Payment procedures: The contract must contain statutory language governing payment procedures. [G.L. c.30, §§39F,39G,39K]. See chapter 5 of this manual for a further description of the payment process.

Weather protection: C.149 contracts must require the contractor to provide weather protection during winter months, in accordance with standard specifications issued by DCPO. [G.L. c.149, §44F].

Financial reporting: Contractors must agree to keep certain financial records, make them available for inspection by State agencies, and file periodic financial reports. [G.L. c.30, §39R].

Auditor's certification: The contract must contain a certification by the municipal auditor or accountant stating that appropriated funds are available for the contract and that the official signing the contract has been authorized to do so. The certification should also identify any other municipal officials who have been authorized to make decisions under the contract, such as the approval of change orders and invoices. [G.L. c.44, §31C].

Interpretations and approvals: The contract must contain provisions requiring prompt decisions by the awarding authority on interpretations of the specifications and other approvals. [G.L. c.30, §39P].

Liability insurance: The awarding authority may either require the general contractor to provide project insurance covering both the contractor and the awarding authority, or it may arrange to insure itself separately.

Dispute resolution: Disputes inevitably arise on construction projects. Although not required by statute, the contract should provide a mechanism for the resolution of those disputes.

Tax compliance: Any person contracting with a municipality must certify in writing that he or she has complied with State tax laws. [G.L. c.62C, §49A].

Step 2: Advertise

At least two weeks prior to the deadline for submitting bids, a notice inviting bids must appear in the Central Register, published by the Secretary of the Commonwealth, and in a local newspaper. [G.L. c.149, §44J]. See Appendix C for information on submitting notices to the Central Register. A notice must also be posted in the awarding authority's office at least one week prior to the deadline.

For all projects, the notice must contain the following information:

- A description of the project, in sufficient detail to allow bidders to determine if they are qualified and wish to bid.
- Where and when bidding documents can be obtained.
- Where and when bids are due.
- The estimated cost of the project.

For c.149 projects, the following additional items must also be included:

- The qualification category for the general contractor.
- The filed subbid categories.
- The place and time for submitting subbids.

Filed subbids and qualification categories are discussed later in this chapter.

Step 3: Distribute Bidding Documents

The bidding documents must be made available to all who ask for them. A record should be kept of all who receive the documents. If it becomes necessary to issue an addendum to the bidding package, the addendum should be sent to all those who have already received the document. In such cases, to avoid misunderstandings or protests, the bidders should be requested to acknowledge in their bid forms the addenda which they received.

There are two additional requirements for c.149 projects. First, each bidder is entitled to one free set of bidding documents.[†] Second, the list of contractors who have received the bidding documents must be posted in the awarding authority's office and sent weekly to the Central Register. [G.L. c.149, §44B].

Step 4: Bid Deposits

Each bidder must submit with its bid a bid deposit equal to five percent of the amount of the bid. The bid deposit may be in the form of a certified check, bank treasurer's or cashier's check, cash, or a bid bond from a licensed surety company. [G.L. c.30, §39M; c.149, §44B].

Step 5: Filed Subbids

General contractors on major construction projects typically hire subcontractors to perform certain specialized aspects of the work. On most private sector construction projects, the general contractor selects the subcontractors it wishes to use and negotiate a price for each subcontract; the project's owner is not involved in this negotiation. For many years, however, Massachusetts has used what is known as the "filed

[†] A deposit may be required, which must be refunded when the bidding documents are returned.

subbid" system for selecting certain subcontractors on some public construction projects.

A subcontractor must be selected through the filed subbid system if the following three conditions are met:

- (1) The project is being bid under the c.149 bid laws;
- (2) The subcontractor's work falls under one of the categories listed on page 35; and
- (3) The estimated cost of the subcontract is greater than \$10,000.

The following paragraphs describe the procedure to be followed when the filed subbid system is used. [G.L. c.149, §44F]:

1. The categories for which filed subbids will be accepted must be included in the public notice.
2. Subcontractors must submit subbids for the work in each filed subbid category directly to the awarding authority, using the standard bid form shown in Appendix C. The deadline for receipt of filed subbids is noon on the fourth working day prior to the day on which general bids are due. Filed subbids are subject to the same requirement for bid deposits as are general bids (see step 4, above).
3. Subcontractors may submit unrestricted subbids, meaning that their subbids are available for use by any general contractor, or they may restrict their subbids so that only certain general contractors can use them.
4. The subbids are publicly opened and read. Within two working days, the awarding authority must reject any subbids which do not have a bid deposit or which do not otherwise conform to the bidding

requirements.[†] A list of the subbidders, and their subbid amounts, is then mailed to all those who have received the bidding documents for the general bids. This list must be sent out at least two working days before the general bids are due.

5. Each general contractor must select, in each subbid category, the subcontractor it wishes to use (provided it is not restricted by the subcontractor). The general contractor must list in its general bid the names of the selected subcontractors and the respective subbid amounts. General contractors are not required to take the lowest subbid in each category.

Can a general contractor also submit a filed subbid? Yes, if the contractor normally does the work covered by the subbid category with its own employees. The rule here is that if a general submits a filed subbid, it must list itself for that subtrade on its general bid. But there is an exception to this rule: the general can list a subbidder other than itself if three conditions are met: (1) the other subbidder's bid is the lowest subbid; (2) the other subbidder's bid is lower than the general's subbid; and (3) the other subbidder's bid is not a restricted subbid. [G.L. c.149, §44F(5)].

What happens if no unrestricted subbids or no subbids at all are filed in a particular category? The awarding authority can issue a directive to the general bidders to include that subtrade work within the general's scope of work. The winning general contractor can then select a subcontractor, subject to the approval of the awarding authority. If the awarding authority determines that the proposed subcontractor is unqualified, the general contractor is obligated to substitute a different subcontractor (again, subject to the awarding authority's approval), but

[†] A subbid must be rejected if it is on a form which is incomplete, conditional, obscure, or contains additions not called for in the plans and specifications; if there is no bid deposit; or if the subbidder has failed to acknowledge all addenda to the bid documents. Failure to reject such a subbid, however, does not validate it nor preclude the awarding authority from later rejecting it.

the price of the contract is not adjusted because of the substitution.
[G.L. c.149, §44F(4)].

What happens if there are only one or two unrestricted subbids in a particular category? If the awarding authority finds that the subbids are reasonable, it may proceed in the normal manner. But if the subbids are unreasonably high, the following alternate procedure can be used [G.L. c.149, §44F(4)(a)]:

- i Specify an arbitrary amount for each of the general bidders to carry in their bids for that category of work.
- ii Issue requests for subbids, in writing, to at least three qualified firms, and publicly open their bids.
- iii Select the lowest subbidder to whom the winning general contractor has no objection, and adjust the general contract price to reflect the difference between the allowance and the actual subcontract cost.
- iv If this secondary subbidding process does not produce any acceptable subbidders, allow the general contractor to select any qualified subcontractor. In this case, the adjustment in price is negotiated between the general contractor and the awarding authority.

What happens if you reject all subbids for a subtrade? Follow steps i through iv, above. [G.L. c.149, §44F(4)(a)].

Step 6: Open General Bids

All bids must be publicly opened and read at the time at which they are due. [G.L. c.149, §44J]. The following items should be checked for each bid:

- Is the bid for the right project?
- Is the bid amount specified?
- Is the bid signed?
- Is a bid deposit included?

- Has the bidder acknowledged receipt of any and all addenda issued by the awarding authority?
- For c.149 contracts, has the bidder submitted a certificate of eligibility and an update statement? (These two forms are discussed below.)

All bid documents, with the exception of the contractor update statements, are open for public inspection.

Step 7: Review General Bids

The law requires that the contract be awarded to the lowest eligible and responsible bidder. [G.L. c.30, §39M; c.149, §44A]. Eligible means the bidder meets all the requirements set forth in the bidding documents; responsible means the bidder possesses the skill, ability, and integrity to complete the job.

On c.30 projects, the awarding authority reviews the qualifications of the apparent low bidder after the bids are opened.[†] The awarding authority may request any information from the bidder needed to determine if the bidder is responsible. It is particularly useful to check references on recent projects if the bidder is a company with which you are not familiar.

On c.149 projects, each bidder must submit with its bid a certificate of eligibility issued by DCPO. [G.L. c.149, §44D; 810 CMR 4.00]. To obtain a certificate of eligibility, a contractor must submit a qualifications statement to DCPO, which reviews the contractor's experience. The time required to obtain a certificate is such that a contractor generally must apply for one well in advance of a project. Certificates must be renewed annually.

[†] Municipal highway projects funded in part through the State Department of Public Works (DPW) under G.L. c.90, §34 are subject to DPW's contractor prequalification requirements. Contact DPW for further information.

Each certificate contains three important pieces of information: the categories of work for which the contractor is qualified; the single project dollar limit, which represents the largest size project which the firm is qualified to do; and the aggregate rating limit, which represents the total amount of work which the firm is qualified to do at any one time. DCPO issues certificates for the following categories:

General contracting	Roofing
Historical restoration	Metal windows
Sewage and water treatment plants	Painting
Energy management	Plumbing
Telecommunications	HVAC
Asbestos removal [†]	Electrical
Floor covering	Modular/prefab construction ^{††}
Demolition	Elevators
Pumping stations	Masonry

For each project, the awarding authority must designate the category (or categories) in which the general contractor must be qualified; this is included in the published notices inviting bids. When reviewing the general bids, the awarding authority must check to see if each bidder has a current certificate for the appropriate category, and that the single project dollar limit on the certificate is at least equal to the amount of the contractor's bid. This provides evidence that the contractor has the right experience and can manage projects of that size.

In addition to a certificate of eligibility, each c.149 bidder must also submit an update statement,^{†††} which shows recent and current projects, any significant changes in financial position, and the names and

[†] Asbestos removal contractors must also be licensed by the Department of Labor and Industries. [G.L. c.149, §6B].

^{††} Modular construction must be procured by following detailed statutory procedures found in G.L. c.149, §44E. Chapter 6 of this manual deals with modular construction procedures in detail.

^{†††} The update statement is not a public record and must be removed from bid documents before these documents are offered for public inspection [810 C.M.R. 4.03(11)].

qualifications of the supervisors proposed for the job. The awarding authority should check references and review the update statement to see if there are any indications of a significant change in the firm's ability. If needed, the awarding authority may also request from DCPO copies of the contractor's certification application and evaluation. Any bid submitted without both the appropriate certificate of eligibility and the update statement is invalid, and must be rejected by the awarding authority.

Finally, the aggregate rating limit on the certificate of eligibility must be checked. The total dollar value of the firm's current work (as shown on the update statement) plus the amount of its bid for this project must not exceed the aggregate rating limit.

The submission of a valid certificate of eligibility is obviously strong evidence that a contractor is qualified, but the final decision is always in the hands of the awarding authority. In the rare instances where an awarding authority chooses to disqualify a bidder on a c.149 project, based on information in the update statement or for other reasonable cause, DCPO must be notified. [G.L. c.149, §44D]. The awarding authority may also request DCPO to reconsider its certification of a particular contractor based on new or additional information. [810 C.M.R. 4.13].

Whenever the apparent low bidder is disqualified, whether it be on a c.30 project or a c.149 project, the bidder may protest to DLI. Bid protests can delay the project. This should not discourage the awarding authority from disqualifying a bidder when it is appropriate to do so, because having an unqualified contractor can obviously result in far greater problems. Just make sure you have solid, documented reasons to support the disqualification.

Some additional considerations in reviewing bids:

Analysis of bid price. If the low bid is significantly higher than the designer's estimate, it is often useful to understand why before awarding the contract. Ask the designer to analyze the bids. You can then decide whether to proceed with the award; wait and rebid the project at another time, if the differences resulted from temporary market conditions; or return to the design phase to reduce the project's scope.

Debarments. Contractors which have been debarred by DCPO or DLI are not eligible to bid on public contracts during the period of their debarment. [G.L. c.149, §44C]. Debarments may be made for violations of the public contracting statutes or other laws, or for repeatedly deficient performance. Debarments are published in the Central Register.

Rejection of bids. An awarding authority has the power to reject any and all bids if it is in the public interest to do so. For example, if all bids are significantly higher than the designer's cost estimate, the awarding authority could choose to reject all bids and re-bid the project after scaling down the design.

Substitution of subbidders. On c.149 projects which contain filed subbid work, the awarding authority may require the winning general contractor to use a different subbidder than one listed on the general's bid form, unless the general objects to the change and has a reasonable basis for its objection. If a switch in subbidders is made, the total contract price is adjusted to reflect the difference in the subbid prices. In most cases, you would want to substitute a subbidder with a lower price than the one listed on the general's bid. For the unusual case where an awarding authority wants to substitute a subbidder with a higher price than the one named on the general's bid, the statutorily mandated procedure could result in the

award of the general contract to a different general bidder. [G.L. c.149, §44F(4)(b)].

Step 8: Obtain Bonds and Execute Contract

After the low qualified bidder is notified of the contract award, it must provide to the awarding authority evidence of a performance bond (for c.149 projects) and a payment bond (for both c.149 and c.30 projects). The performance bond provides protection to the awarding authority in the event of deficient work or default on the part of the contractor; it must be in the amount of the full value of the contract. The payment bond provides similar protection to the contractor's employees and sub-contractors, guaranteeing they will be paid any monies owed them during the project. For c.30 projects, the payment bond must be in the amount of at least 50 percent of the contract value, while for c.149 projects, the full contract value is required. [G.L. c.149, §29; c.149, §44E].

For c.30 projects, the contractor has ten days from the date of notification of contract award to obtain the payment bond. [G.L. c.30, §39M]. For c.149 projects, the awarding authority must make the award within thirty working days after bid opening [G.L. c.149, §44A], after which the contractor has five working days to obtain the payment and performance bonds and execute the contract. [G.L. c.149, §44E].

Performance and payment bonds must be issued by a surety company licensed by the State Division of Insurance. Check with the Division of Insurance if you have any doubts as to the legitimacy of a particular bonding company.

If the selected general bidder fails to execute a contract or furnish the necessary bonds, then the awarding authority should select the next lowest responsible and eligible bidder. If the second general bidder consents, the thirty-day time limit for execution of the contract can be extended. [G.L. c.149, §44A(3)].

After a general bidder is selected, it must present subcontracts to each selected filed subbidder. These subcontracts must be executed within five working days of presentation. The subcontract form is specified at G.L. c. 149, §44F(4)(c). The general contractor may request subcontractors to furnish performance and payment bonds. [G.L. c. 149, §44F(3)]. If a subcontractor fails to execute the subcontract or to furnish the necessary bonds, the general bidder and the awarding authority must select from the other non-rejected filed subbidders the lowest responsible and eligible subbidder to whom the general bidder has no objection. The contract price is adjusted by the difference between the amount of the subbid and the amount of the delinquent subbidder's subbid. [G.L. c. 149, §44F(4)(c)].

In the case of cities operating under plans A, B, C, and F, the contract must be signed by both the department head and the mayor. For cities operating under plans D and E, the contract must be signed by the department head and the city manager. In charter cities, the charter will specify which officials have authority to sign.

Finally, the name of the firm awarded the contract must be published in the Central Register; use the "Contract Award" form (Appendix C) for this purpose.

Step 9: Return Bid and Subbid Deposits

For c.149 projects, bid deposits of general contractors must be returned within five working days after the bid opening, except that the deposits of the three lowest bidders must be retained until a contract is signed. If a low bidder fails to sign a contract or provide the necessary bonds, the awarding authority shall keep that bidder's deposit as damages, unless the contractor's failure was due to death, disability, or a bona fide clerical or mechanical error. [G.L. c.149, §44B(3)]. Return of subbidders' deposits follows the same procedure, except that the awarding authority retains until the general contract is signed the deposits of (1) all subbidders named on the bids of the three lowest general bidders, and

(2) the three lowest and eligible subbidders in each subtrade. [G.L. c.149, §44B(4)].

There are no specific time limits for the return of bid deposits on c.30 projects, so the c.149 requirements can be used as a guideline.

Exceptions to the Rule

This section discusses several circumstances in which the normal bidding process might not be followed.

Emergencies

For c.149 projects, the normal bidding procedures can be dispensed with for work needed to preserve the health or safety of persons or property. The prior approval of DCPO is normally required. If the urgency of the situation makes it impossible to contact DCPO in advance, the emergency work can be started, but DCPO must be notified as soon as possible.[†] [G.L. c.149, §44A(4)].

For c.30 projects, the normal bidding process may be dispensed with only in cases of "extreme emergency caused by enemy attack, sabotage, other such hostile actions, or resulting from explosion, fire, flood, earthquake, hurricane, tornado, or other such catastrophe." [G.L. c.30, §39M]. DCPO approval for the waiver of advertising is required. [G.L. c.149, §44J]. Only work necessary for "temporary repair and restoration to service of any and all public work in order to preserve health and safety of persons and property" may be performed.

In both cases, although formal bidding is not required, the awarding authority should solicit as many informal quotes or bids as is possible

[†] If DCPO subsequently disapproves the emergency request, work must be stopped immediately, although the contractor is still entitled to payment for work done prior to the stop work order.

under the circumstances. In addition, note that the prevailing wage requirements will still apply to the contract.

Note also that the Supreme Judicial Court has held that an awarding authority may not artificially create an emergency simply by putting off normal maintenance and repair work. If you knew or should have known that a roof needed repairing and you had time to fix it using the normal bidding procedures, you will have difficulty justifying the use of emergency procedures when it starts leaking.

Alternative Modes of Construction

Certain construction management techniques do not fit into the standard sequential process described above. The use of any construction technique which deviates from the statutory bidding process requires the approval of the Legislature, with the exception of modular construction, which can be procured by following a set of procedures found in G.L. c.149, §44E. (See chapter 6 for a discussion of modular construction.) Alternative construction methods which require legislative authorization include the following:

- turnkey construction
- fast tracking
- design/build
- sale/leaseback transactions
- lease/purchases of buildings.

It is beyond the scope of this manual to discuss in detail the pros and cons of these techniques. A quote from the Ward Commission report should provide sufficient warning of the potential pitfalls:

The use of modes of procurement other than the sequential one can offer considerable savings in terms of time, money, and perhaps improvements in quality. However, they may also entail considerable risk if the method should fail. The degree of success is contingent upon the expertise and acumen of the "owner," ... and in certain instances involves considerably more discretion on the part of those exercising authority on behalf of it. Moreover, the notion of equity, free competition and fairness must be translated into the new frameworks because the conventional procedures for selection of private contractors are typically not amenable to these other approaches.[†]

The Inspector General reviews requests for legislative authorization of alternative construction methods and makes recommendations to the Legislature. These reviews consider such questions as:

- Are there legitimate reasons why this project requires a different approach?
- How will the public be protected against cost overruns and deficient work?
- Is the proposed method of selecting a contractor fair, open, and equitable?

Similarly, if a contract includes both construction and non-construction activities (for example, a contractor might be hired to operate a sewage treatment plant, with part of the operational responsibilities including maintenance and repair work), the construction bid laws would apply to the entire contract, unless legislative approval was obtained to use a different procurement method.

[†] Special Commission Concerning State and County Buildings, Final Report, December 31, 1980; v.7, p.95.

In-house Construction

Municipalities may use qualified employees for construction work without putting it out to bid, provided the work falls within the scope of their normal duties. The bidding requirements of G.L. c.30, §39M apply to the purchase of materials used in construction work for both building and non-building projects.

Volunteer Construction

The use of volunteer labor is often suggested as a cost-saving measure, particularly in smaller towns. Although this practice is not prohibited by law, we would discourage its use on larger projects or those involving structural, mechanical, or electrical work. In such cases deficient work could have costly consequences for the town. If volunteers are used, qualified supervision is essential.

Keep in mind, too, that the bid laws apply even if the project costs the municipality as little as \$5,000. Thus, a municipality cannot "give" the local civic association \$10,000 to buy materials and fix up the town bandstand; any agreement to spend public funds on public construction must be consistent with the bid laws.

CHAPTER FIVE

THE CONSTRUCTION PHASE

Once the contract is awarded, the general contractor will mobilize its work force and begin the actual construction process. Although most of the major decisions concerning the project have already been made, the construction activity itself is a complicated endeavor with considerable potential for problems.

Supervising the Construction

On major projects, there will be three key people supervising the work: the project manager, the clerk of the works, and the designer. On smaller projects, some of the oversight functions may be combined so that only one or two key supervisors are needed.

The project manager. The project manager is the official designated by the awarding authority to exercise overall responsibility for the project. Typical duties of the project manager should include: monitoring the overall progress of the project; meeting at least weekly with the contractor, the designer, and the clerk of the works; approving change orders and contractor invoices; coordinating with other agencies involved with the project; and resolving the myriad problems and questions which are sure to arise. The project manager should, of course, be a person with experience in managing construction projects. The amount of time which the project manager's duties will require will vary from project to project. A full-time project manager is highly desirable on very large or complex projects, and in such cases the awarding authority should consider hiring a project

manager on a temporary basis if it does not have qualified staff available.[†]

The clerk of the works. The clerk of the works is the awarding authority's representative on the project site. The clerk's general function is to observe and record the progress of the construction and to insure that the work conforms to the plans and specifications. The clerk keeps detailed records of work performed, materials and supplies delivered, and delays and their causes. The clerk attends the periodic progress meetings with the contractor, designer, and project manager, and also reviews invoices from the contractor and recommends their approval. The clerk of the works should be a full-time position on most major projects.

The designer. The architect or engineer who prepared the plans and specifications will typically be involved in the construction phase. At a minimum, the designer will need to approve shop drawings,^{††} supervise the testing of materials, and interpret the specifications. On many municipal projects, the designer's contract includes the functions of the clerk of the works.

Changes

During the progress of the work, changes to the contract terms may be necessary. The changes may be due to (1) site conditions differing from those indicated in the plans; (2) circumstances requiring the awarding authority to suspend, delay, or interrupt all or part of the work; or (3) requests by the contractor for deviations from the plans and

[†] Construction management is considered a design service, so the hiring of an outside consultant to serve as project manager may be subject to the designer selection process described in chapter 2.

^{††} Shop drawings are drawings of construction details prepared by the general contractor.

specifications. For both c.149 and c.30 contracts, statutory provisions apply to changes.

Site conditions. The contract must contain statutory language regarding the adjustment of contract price where site conditions differ substantially or materially from the conditions indicated in the plans or contract documents. (You should include in the contract a procedure for filing, investigation, and settlement of claims.) Either the awarding authority or the contractor may request an equitable adjustment in the contract price after discovery that the hidden physical conditions on the site differ from the plans or contract. The request must be in writing and should be made as soon as possible after discovery of the condition. The awarding authority must investigate, and, if the conditions cause an increase or decrease in the cost of the work, must make an equitable adjustment in the contract price. [G.L. c.30, §39N]. The awarding authority may transfer responsibility for investigating latent physical conditions to the bidders. A Massachusetts court has held that a contractor could not recover for extra costs based on insufficient factual data about a work site when the bidding documents contained a provision that all bidders were to rely on their own investigation and research as to the conditions affecting the work.

Suspension, Delay, or Interruption. The contract must also contain statutory language allowing the awarding authority, at its convenience, to suspend, delay, or interrupt the work. The general contractor must be informed in writing. Under certain circumstances the awarding authority must make an adjustment in the contract price to cover increased costs of the general contractor, but the adjustment may not include profit to the general contractor. [G.L. c.30, §390].

Substantial Deviations from the Plans and Specifications. The contractor must perform all the work in conformity with the contract plans and specifications. Substantial deviations may be made only

when authorized by the awarding authority in writing. This type of authorization is often termed a "change order." On major projects, a small number of change orders is not unusual, but if change orders are not carefully controlled, they can result in significant cost overruns.

- (a) Requests from the using agency to modify the design should be closely scrutinized. The project's users need to understand that their chance to propose changes was during the design phase. Of course, unexpected circumstances may make some design changes necessary.
- (b) The cost of each change order is determined in accordance with a basis for payment set forth in the contract (e.g., a unit price for more fill, or an hourly rate for particular work). If no basis for adjustment is included in the contract, the cost of the change order must be negotiated with the contractor. Make sure the contractor's quote is reasonable, because the absence of competition can lead to higher prices than would be the case if the work was bid. If the cost appears high, consider the option of bidding the additional work as a separate project after the current project is completed.
- (c) Change orders must be in writing. The contract should clearly specify who is authorized to approve change orders on behalf of the awarding authority, and should state that the awarding authority is not obligated to pay for change orders which are not approved in writing. [G.L. c.44, §31C; c.30, §39I].
- (d) Within 30 days after a change order is issued, the awarding authority must issue a certificate, signed under penalties of perjury, containing the following information: (i) an explanation of why the change is needed; (ii) a statement that any substitute work is of the same cost and quality, or that the contract price has been equitably adjusted; (iii) a statement

that the change will not significantly hurt the project and that it is in the best interest of the awarding authority. [G.L. c.30, §39I].

- (e) If the change order results in an increase in the contract price, the municipal auditor or accountant must also sign the change order, certifying that appropriated funds are available to cover the increased cost. [G.L. c.44, §31C].

The change order process may not be used to substantially change the scope or increase the size of a project. Substantial changes or increases in scope or size have been held by the courts in some instances to require that the remainder of the project be re-bid. If the scope or cost of the project increases substantially, you should consult with your municipal attorney as to whether it is necessary or desirable to rebid the work.

Approvals

The general contractor will often submit requests to the awarding authority for the approval of particular items as being "equal" to those named in the specifications. The awarding authority must carefully assure itself that the proffered item does, in fact, meet the specifications. On larger projects, it is common for an awarding authority to hire expert consultants -- generally, the designer who developed the specifications -- to review such requests and make recommendations regarding such approvals. Final approval is always the responsibility of the awarding authority.

Whenever the awarding authority is required to interpret specifications or approve such things as equipment, materials, or construction methods, it must make a decision within thirty days of the contractor's written submission. If extended investigation or study is required, then the awarding authority must give the contractor written notice within thirty days of the reason why the decision cannot be made and the date by which the decision will be made. [G.L. c.30, §39P].

Payment Procedures

On all local construction projects which cost more than \$2,000 and which involve a public building, whether bid under c.30 or c.149, State law mandates specific contractual provisions incorporating the following payment procedures [G.L. c.30 §39K]:

- (a) The contractor may submit monthly invoices for work already completed and materials delivered. The invoice must list amounts for each filed subcontractor. The awarding agency shall note on the invoice the date of receipt.
- (b) If the invoice contains arithmetical errors or is not in the form specified by the awarding authority, it may be returned within seven days for corrections. If the awarding authority disagrees with the amount of the invoice, it may adjust the amount.
- (c) If the invoice is correct, the awarding authority must make payment within fifteen days. After fifteen days, the amount due is subject to interest charges; consult the statute for specific instructions on how to calculate these charges.
- (d) The awarding authority may (and should) withhold from each invoice five percent of the amount, as a holdback to cover any claims which may arise due to unsatisfactory work. The awarding authority may (and should) also withhold, in addition to the five percent, additional amounts to cover any specific claims against the contractor which have already been identified.

On non-building projects, the payment process is similar, except that the awarding authority has 35 days rather than 15 days to pay the monthly invoice. [G.L. c.30, §39G].

If a general contractor fails to make a payment to certain subcontractors, included those selected through the filed subbid system, the

subcontractor may be entitled to request payment directly from the awarding authority. If such a request is received, you should consult with your municipal attorney to determine if the subcontractor is eligible for direct payment and to obtain the specific statutory requirements for making such payments. [G.L. c.30, §39F].

Project Closeout

As the construction project nears an end, the general contractor will notify the awarding authority that the work is substantially complete. At this point the project manager, or someone designated by the manager, should inspect the project and prepare a punch list. This list details all of the remaining items which must be completed by the contractor.

When the contractor has completed the punch list items, it will submit an invoice for final payment. This invoice will include any amounts which have been withheld from prior invoices. However, the awarding authority may continue to hold back amounts to cover any punch list items which it believes have not been satisfactorily completed, as well as amounts to cover any other claims against the contractor which may be outstanding.

Every contract for a building project must contain statutory language regarding final payment to the general contractor. When the project is 99 percent completed (or even earlier, if the contractor substantially completes the work and the awarding authority takes possession), the awarding authority must make payment on the contractor's final invoice within 65 days. The architect's good-faith certification that the work is complete is conclusive. The awarding authority must retain from the final payment an amount based on its estimate of the fair value of its claims against the contractor as well as any amounts due to subcontractors. [G.L. c. 30, §39K]. For non-building projects, the awarding authority has 35 days to make the final payment; the procedures for making final payment are set out in G.L. c.30, §39G.

If the contractor fails to complete the project in a satisfactory manner, the awarding authority may need to invoke the performance bond. In such cases the bonding company is responsible for the cost of completing the work. Typically the bonding company will arrange for another contractor to complete the work. Attempts to invoke a performance bond will usually involve extensive negotiations with the contractor and with the bonding company, so the assistance of legal counsel should be sought as early as possible.

Performance bonds must remain in effect for at least one year after the project's completion, and longer if necessary to cover guarantees or pending claims. [G.L. c.30, §40].

Contractor Evaluation

A contractor evaluation questionnaire (see Appendix C) must be completed at the conclusion of all c.149 projects. These questionnaires provide information on the performance of the general contractor, and are used by DCPO in determining whether or not to renew the contractor's certificate of eligibility. These questionnaires play a major role in helping to ensure that unqualified contractors will not be eligible for future public work, so awarding authorities are urged to make every effort to comply with this requirement.

The questionnaire can be completed either by the project designer or by an official of the awarding authority. It is sent to DCPO, with a copy to the contractor. It is due either 30 days after final acceptance of the project, or six months after occupancy or substantial completion, whichever is earlier. The contractor may submit a written response to DCPO. [G.L. c.149, §44D].

Preventing Fraud and Abuse

Although the vast majority of construction contractors are honest, there are always a few who try to take advantage of the public. They may try to substitute materials which do not meet the specifications, or they may try to inflate their billings on unit price work. Vigilant observations and recordkeeping by the clerk of the works and careful reviews of invoices by the project manager are the best protection. Periodic unannounced site visits by the project manager to check invoices against on-site materials are also recommended. .

Municipal officials should also be cautioned against accepting lunches, gifts, or other gratuities from either construction contractors or designers. Although such entertainment and gift-giving is often practiced in the private sector, in the public sector it is almost always inappropriate and often illegal. The Massachusetts conflict-of-interest law (G.L. c.268A) prohibits municipal officials (including unpaid committee members) from accepting anything of substantial value from a person or firm which has or is seeking a municipal contract, or from doing anything which would give even the appearance of improper influence. If you need to go to lunch with your architect to discuss the latest designs, make it Dutch treat.

The conflict-of-interest law encourages public agencies to establish and enforce standards of conduct. The Inspector General's recommended Code of Conduct for Public Employees is included as Appendix E of this manual. The Inspector General urges you to adopt this Code.

All municipal officials are encouraged to report to the Inspector General any illegal or improper activity on the part of designers and contractors.



CHAPTER SIX

MODULAR CONSTRUCTION

In 1988, the Legislature amended the State's designer selection and construction bidding laws to allow public agencies, including municipalities, to procure modular buildings by following detailed statutory procedures found in G.L. c.149, §44E(4). These procedures apply to the acquisition and installation of modular buildings, including the solicitation and evaluation of proposals, the award of contracts, and the installation of modular units. Contracts for preliminary design work, including any feasibility studies and professional services needed to determine the design requirements for modular buildings, remain subject to the state's designer selection law. Site preparation work, construction of foundations, and attachment of modular buildings to utilities can be included as part of the modular building procurement, or can be bid separately through the conventional construction bidding procedures.[†]

The purpose of the modular procurement law is to allow awarding authorities to choose this alternative to the conventional mode of building construction, by following specific planning and contracting procedures which ensure fair competition. The goal of this legislation, like other public construction laws, is to produce buildings which are properly designed and built, at a fair cost, in a reasonable and controlled period of time.

[†]G.L. c.149, §44E(4) exempts the work involved in the manufacture of modular buildings from the State statutes which require the payment of prevailing wage rates and hiring preferences for veterans and residents of Massachusetts [G.L. c.149, §§26-27G]. However, the exemption from these employment laws does not apply to the work performed at the construction site. Any modular building contract which includes site work such as construction of foundations, attachment to utilities, or installation and assembly of modular units is subject to these legal requirements.

G.L. c.149, §44E(4) sets out a clear statutory procedure for entering into a contract for modular construction. This procedure calls for the awarding authority to define the project requirements, prepare the specifications, identify all of the criteria that will be considered in selecting a proposal to provide modular construction, and then to solicit offers through a request for proposals (RFP). The competing proposals are first judged for responsiveness, to determine whether each proposal provides the documentation and information required by the RFP. The responsive proposals are then evaluated according to all of the criteria stated in the RFP. Prices submitted by the offerors are considered only after the proposals have been rated on all of the other criteria. A contract is then awarded to the offeror with the most advantageous proposal, taking into consideration both the price and the non-price criteria.

The proposal procedure is designed to allow the awarding authority flexibility to weigh non-cost factors when comparing the merits of proposals presented by competing modular contractors. In a typical municipal modular procurement, however, the procurement process should closely specify the minimum requirements of the project and then select the proposal which meets those minimum requirements at the lowest cost. If the RFP completely and thoroughly describes the construction standards, the scope of work sought, and all contract terms, the proposals which meet these requirements should generally receive equal ratings. The selection process then resembles a bidding procedure, in which the contract is awarded to the lowest eligible bidder who submits a responsive proposal.

The Department of Labor and Industries (DLI) has jurisdiction to enforce the modular procurement law, as with other provisions of the public construction bidding laws. DLI can investigate grievances and complaints and initiate enforcement proceedings in court. [G.L. c.149, §44H].

What is a modular building? A modular building is defined by statute as a pre-designed building or units of a pre-designed building assembled and equipped with internal plumbing, electrical or similar systems prior to movement to the site where such units are attached to each other and such building is affixed to a foundation and connected to external utilities; or any portable structure with walls, a floor, and a roof, designed or used for the shelter of persons or property, transportable in one or more sections and affixed to a foundation and connected to external utilities.

This statutory definition is broadly drafted to include such distinct types of construction technology as pre-stressed concrete modules often used for maximum security prison cells, steel and wood frame portable modular classrooms, and pre-engineered metal buildings used for warehouse or storage space. The common factor in all types of modular construction techniques is that traditional construction elements, such as doors, windows, walls, etc., are combined into large, factory-built modular components.

How does the procurement of a modular building differ from conventional construction? The conventional mode of construction proceeds in distinct sequential stages: predesign, design, and construction. The awarding authority selects first a feasibility consultant, and then an architect for the subsequent design work, through the designer selection process described in chapter 2 of this manual. The architect prepares detailed plans and specifications. The construction work is then bid through the procedures described in chapter 4, and a general contract awarded to the lowest eligible and responsible bidder. Bids for specialized sub-trade work such as roofing, plumbing, electrical work, etc., are solicited separately from sub-contractors through the filed sub-bid process discussed on pages 45 - 48 of this manual.

Modular construction streamlines the conventional construction scheme in two ways: (1) design and construction of the pre-fabricated

modular units are combined in the manufacturing process; and (2) specialized sub-trade work, including wiring, plumbing, roofing, glazing, HVAC, etc., is done by the manufacturer, so there is no separate filed sub-bid procedure.

The process of procuring modular construction is also slightly different. Instead of selecting an architect to prepare detailed plans and specifications for the construction work, the awarding authority issues a request for proposals (RFP) which describes the project requirements in detail, lists all criteria that will be used to compare competing proposals, and states all of the terms and conditions that will apply to the procurement. Each responsive offeror will submit a proposal to provide a pre-designed building (or buildings) which meets the stated requirements, in accordance with the terms set forth in the RFP. A proposal is then selected through an evaluation process described in detail on pages 83 - 90 of this chapter.

When should modular construction be considered? The decision to procure a modular building should be made on the basis of a study that addresses all of the relevant planning issues. The study should assess all of the alternatives, including both conventional and modular construction, and other options such as leasing space until new construction can be completed.

Modular buildings are usually considered for one or more of the following reasons: portability; speed of construction; low initial cost; and availability of financing options, such as lease/purchase. In addition to these goals, however, you should also weigh possible trade-offs, such as energy efficiency, maintenance costs, durability, and acceptability to the community. You should not rely on information from modular industry sales representatives to assess these trade-offs, but should base a decision on the results of an independent study. The use of modular buildings as a temporary solution to a space shortage should not be undertaken as a stopgap

measure that addresses only an immediate problem and ignores the costly consequences of inadequate long-term planning.

Chapter 149, §44E(4), expressly states that an awarding authority shall not procure a modular building to replace another modular building unless it has first certified that such replacement is necessary, cost-effective over the long-term, and not detrimental to public policy, and has set forth a detailed written explanation of its reasons for such certification.

Is It Necessary to Conduct a Study? As a practical matter, yes. The study phase is a critical component of any construction project. The purposes and objectives of a study are explained on pages 26 - 30 of this manual. In a modular project, the study results will be needed to determine the advisability of utilizing modulars. The study will also define the requirements of the project and determine all of the technical specifications and evaluation criteria that will go into a detailed request for proposals.

Must We Follow the Designer Selection Procedure to Hire An Outside Consultant For a Modular Construction Study? Yes. A contract for any design service for any building project with an estimated construction cost of more than \$10,000 is subject to the designer selection process set forth in chapter 2 of this manual. These designer selection requirements do not apply to contracts for the fabrication and installation of modular buildings, but they do apply to the award of contracts for feasibility or other studies, surveys, tests, cost estimates or programs needed to plan a modular project, and for the preparation of a request for proposals.

You may want to hire the study designer to provide further design services in connection with the project, such as the preparing specifications for the RFP, assisting you with proposal evaluation, and overseeing the installation of the buildings. If you are considering this option, you must state in your original

advertisement that, subject to an independent review, the feasibility designer may be awarded a contract for these continued services. The full scope of the continued services must be clearly stated in the advertisement. You must also set separate fees at the outset for the feasibility study and for the subsequent design services. [G.L. c.7, §38H(i)].

Procedures for Procurement of Modular Buildings

After the study phase of the building project is completed, and if the results support a decision that your requirements can best be met by modular construction, you must undertake a step-by-step procedure which is outlined in G.L. c.149, §44E(4).

Step 1: Prepare a Request for Proposals

The request for proposals (RFP) will be a complex document which sets forth all of the information needed to prepare a responsive proposal. A copy of the RFP must be made available on an equal basis to anyone requesting one.

Successfully planning a modular construction project may well call for more technical expertise and acumen on the part of the awarding authority than a conventional construction project. The design specifications of a conventional building can be tailored by the architect to fit a description of your requirements. In a modular project, those requirements must be translated through the RFP into a set of objective criteria which specify all of the factors that will be considered, and which, at the same time, avoid proprietary specifications that will tend to eliminate competition. For this reason, we strongly recommend that you involve a qualified design professional in the preparation of the RFP. If you do not have a qualified architect on your staff or building committee, you should hire an outside consultant, bearing in mind that the

designer selection procedures described in chapter 2 of this manual apply to the hiring of such a consultant.

G.L. c.149, §44E(4), lists the information which must be contained in the RFP. This information should be organized in a coherent, logical sequence. A model RFP for modular construction is presented on pages 94 - 107 of this chapter. The contents of an RFP for a particular modular building project will have to be developed to meet the requirements of that project, but the model RFP in this manual can be used as a guide to organizing the information. The following is a discussion of the kinds of information that should be included in every RFP.

Part I - Introduction

It is appropriate to include the following information in an introduction:

- A description of the project in general terms.
- The general scope of services to be included in the proposal.
- A statement that any proposal which does not meet all of the submission requirements will be deemed non-responsive, and will not be considered for a contract award.
- The qualifications required of all offerors.
- A brief explanation of the procedure for evaluating responsive proposals, which states that the evaluation will consider only the criteria contained in the RFP.
- The rules for modification or withdrawal of proposals. The modular procurement statute provides that an offeror may correct, modify, or withdraw a proposal in writing prior to the time set for opening proposals. After the proposals have been opened, an offeror may not change the price, or any provision of the proposal in a manner which is prejudicial to the awarding authority or to fair competition. [G.L. c.149, §44E(4)].
- A statement that all of the terms and conditions of the procurement are contained in the RFP, and that the contract awarded will be subject to all of these terms.
- A statement that the awarding authority reserves the right to reject all proposals, if it is in the public interest to do so.

- A deadline for the submission of proposals, the maximum time for acceptance of a proposal, and the maximum number of days for the completion of the required work by the selected contractor, upon execution of the contract.
- Where questions about the RFP can be directed and the deadline for submitting questions.

Part II - Program Summary

The building program[†] should be referenced here, and the program itself, as prepared by your building committee or study consultant, should be appended to the RFP. The program summary will include, at a minimum, a description of the space needed, its function, and minimum area. The program itself should include site drawings, showing the proposed location of the modular buildings in relationship to existing buildings and to existing utility services to which the new work can be connected, as well as the results of any surveys or tests performed on the site.

You should clearly state that the full program is incorporated in the RFP, and that all proposals will be rated for compliance with all program requirements.

Part III - Scope of Work

All of the work to be included in the proposal must be clearly spelled out. You will have to decide at the outset whether to include site preparation and installation work in the RFP; alternatives are to contract for some or all of this work separately under the construction bid laws or have the work performed by qualified municipal employees.

This section of your RFP should fully describe the contractor's responsibilities with respect to the site preparation; construction of

[†] The development of the program is a part of the feasibility study or pre-design phase of a building project. See pages 26 - 29 of this manual.

foundations, ramps, stairs, and connecting corridors; site assembly and installation of units; attachment to existing utilities; obtaining all necessary plan approvals and permits, including building permits, permits required for transporting modular units from the factory to the site, and occupancy permits; removal of all debris from the site upon completion; and any other required services.

Before a building permit can be issued for modular construction, the State building code regulations require that the plans be approved by a licensed Third Party Inspection Agency.[†] The RFP should state that the contractor will be responsible for obtaining (and paying the fee for) this third-party approval.

If the RFP calls for the lease of modular buildings, the contractor's responsibilities for removal of the units at the end of the lease term and restoration of the site to its original condition should be included.

Part IV - Submission Requirements

This section should clearly explain the minimum requirements that every proposal must meet in order to be deemed responsive (that is, to be considered for a contract award).

To facilitate the evaluation of the proposals, you may want to provide standard formats for the submission of the non-price (or technical) proposal and the price proposal.

Instructions for proposal submission should include:

- The place where proposals are to be delivered, the time and date by which proposals must be received, the time set for opening

[†] See 780 C.M.R. 111.4. A Third Party Inspection Agency is an independent agency approved by the State Board of Building Regulations and Standards to perform inspections and evaluations of manufactured buildings and building components.

proposals, and the maximum time for proposal acceptance by the awarding authority. [G.L. c.149, §44E(4)]. You should state that late proposals will not be considered.

- The times, dates, and places of any pre-proposal informational meetings and site visits, and whether these meetings and site visits are required for all offerors.
- A statement that every proposal must be in two parts, submitted in clearly marked, separate envelopes: 1) non-price information, and 2) price. [G.L. c.149, §44E(4)].
- The RFP should list all of the documents which must be included in the envelope containing the non-price information. It is appropriate to require the following submissions to accompany each non-price proposal:
 - o A DCPO Certificate of Eligibility in Modular/Prefabricated Construction and a Contractor Update Statement. See pages 49 - 51 of this manual for information on certificates of eligibility and update statements. Any proposal submitted without the required certificate and update statement is invalid and must be rejected. [G.L. c.149, §44E(4)].
 - o Proof of certification by the State Board of Building Regulations and Standards. This certification shows that the manufacturer meets State building code requirements.
 - o Detailed plans and specifications of proposed buildings. Each offeror should be required to submit detailed drawings which show the architectural floor plans and factory details of the modular buildings and their interconnecting corridors, passageways, stairs, ramps, etc.; the proposed installation plan; and all manufacturer's specifications governing the materials, equipment, and fixtures used in the buildings.
 - o A complete description of all warranties that apply to the building, its equipment and components, and to the installation work.
 - o Certification of financial interest disclosure, and of non-collusion. Each offeror must certify compliance with the requirements of G.L. c. 43, §27 regarding the disclosure by any employee or official of the awarding authority of any monetary interest in the contract award. The awarding authority must also require each offeror to certify that the proposal is made without collusion or fraud. [G.L. c.149, §44E]. A standard form should be included in the RFP for such certification.
 - o If the contractor is required to perform any work in connection with the site preparation, site assembly, or installation of modular units, the offeror must certify that

he is able to furnish labor that can work in concert with other elements of labor employed at the installation site. [G.L. c.149, §44E(4)].

- o Foreign corporation registration. Any out-of-state corporation must submit a certificate of registration from the Massachusetts Secretary of State. [G.L. c.30, §39L].
- o Tax certification. Each offeror must certify compliance with State tax laws. [G.L. c.62C, §49A].
- o A statement that the offeror will complete the project by a stated deadline. Alternatively, each offeror can be required to submit a proposed project timetable which ensures completion by the deadline.
- o Each offeror must certify where the proposed modular units are or will be manufactured: (1) within Massachusetts; (2) outside Massachusetts but within the U.S.; or (3) outside of the U.S.
- o Certification of compliance with building codes. Each offeror should certify that the proposed plans comply with all applicable building codes, and that in the event that the offeror is selected for a contract award, the offeror will, within a set period of time (30 to 60 working days is within reason) of the notice of award, obtain approval of the plans by a licensed Third Party Inspection Agency.[†] The certification should require the offeror to make all revisions needed to obtain third party approval of the plans without increasing the proposal price.
- o Letter of transmittal. Each offeror should submit a statement signed by an individual certifying that he is authorized to bind the offeror contractually, and that in the event that the offeror is selected for a contract award, the offeror will execute a contract in accordance with all terms stated in the RFP, and will furnish to the awarding authority a payment bond and a performance bond, each in the sum of the contract price.^{††}

The envelope submitted with the price information for each proposal should contain the following:

- A firm, fixed price proposal which states a total project price. This proposal should contain the offeror's name, address, and telephone number, as well as the title of the person submitting

[†]Approval of plans for modular building by a Third Party Inspection Agency is required by the State building code regulations. [780 C.M.R. 111.4].

^{††}The payment and performance bonds are required by G.L. c.149, §44E(4).

the proposal. It must be signed by an individual authorized to bind the offeror.

- Bid deposit. While not mandated by law, the awarding authority may choose to require a bid deposit. If a bid deposit is required, it must be required from all offerors. You must specify the amount or percentage of the contract price required, and the form of the deposit (i.e., surety bond, cash, certified check, or cashier's check).

Part V - Evaluation Criteria

This section must include all standards for determining the acceptability of a proposal based on quality of materials, workmanship, results of inspections and tests, suitability for a particular purpose, and all other measures to be used in the evaluation process. [G.L. c.149, §44E(4)]. The evaluators will use these criteria (and no others) to compare and rate those proposals which meet the minimum submission requirements.

In determining your evaluation criteria, you should avoid the use of vague standards like "general quality of construction and appearance", or "reasonableness of technical approach", which provide little guidance to offerors or to evaluators. Proposals should be compared and evaluated on the basis of specific and concrete factors which are closely related to your project requirements. We suggest that the following evaluation criteria are appropriate for the typical municipal modular building procurement:

1. The contractor's qualifications to perform the work, to be evaluated solely on the basis of the contractor's performance on current or recent projects, which should be listed in the contractor's update statement. (Note that any proposal submitted without an appropriate DCPO certificate of eligibility and update statement is non-responsive, and should be eliminated without further evaluation.)
2. Compliance with all applicable building code requirements.

3. Compliance with all performance specifications stated in the RFP. In determining the performance specifications, it is important to avoid the use of proprietary terms, which allow only specified brands of material, or which are unnecessarily restrictive. Whenever possible, specifications for construction materials, fixtures, and systems should be stated in terms of testing standards which measure such qualities as strength, durability, capacity, flammability, R-value, etc. These specifications should be prepared with close attention to the State building code requirements.

The performance specifications should be explicit and thorough, to provide each offeror enough information to submit a competitive proposal, and to ensure that the final product meets all of your requirements. Standards for all of the following components should be clearly described:

- Foundations or concrete footings.
- Anchoring requirements.
- Outside stairs, ramps, and corridors connecting proposed modular buildings to existing buildings.
- Floor systems, including floor joists, bottom boards, insulation, subflooring, and floor coverings.
- Wall systems, including studs, weight-bearing and wind load capacities, exterior siding, insulation, interior wall construction and finishes, sound-proofing, skirting, and ceiling height.
- Roof systems, including weight-bearing capacity, minimum pitch, roofing material, eave tubes and downspouts, insulation, and ceiling type.
- Door requirements, including door and frame construction, weatherstripping, hardware, and locks.
- Window requirements, including minimum window area, frame construction and finish, glazing, weatherstripping, screens, hardware, and locks.
- HVAC systems.
- Plumbing systems and fixtures.

- Electrical systems, including capacity, number of outlets, and lighting requirements.
 - Fire protection, including alarms, smoke detectors, and sprinkler systems.
 - Communication systems.
 - All special features required by your project.
4. Compliance with specified warranty requirements. Your RFP should specify minimum warranty provisions relative to the entire building and the installation work, as well as minimum special warranty terms for particular components or equipment.
 5. Compliance with all program requirements.

Part VI - Contract Terms

The RFP must contain all of the contract terms and provisions applicable to the modular procurement. [G.L. c.149, §44E(4)]. Each municipality should request its legal counsel to develop a contract for modular procurement, which will resemble a conventional construction contract in most respects. The contract will be a complex document, and a discussion of all of the terms is beyond the scope of this manual. However, you should be aware of these provisions:

Prevailing Wages and Hiring Preferences: The modular procurement law exempts the work involved in the manufacture of modular buildings from the state statutes which require the payment of prevailing wage rates and hiring preferences for veterans and residents of Massachusetts [G.L.c.149, §§26-27G]. However, the exemption from these employment laws does not apply to the work performed on modular buildings at the building site. Any contract which includes site work (such as construction of foundations, attachment to utilities, or installation and assembly of modular units) must contain provisions regarding these legal requirements. Note that the awarding authority must obtain the prevailing wage rates applicable to the project from DLI and include these rates in the RFP.

Adjustments: The contract is subject to certain statutory provisions governing price adjustment. [G.L. c.30, §§39N-O]. The contract should also include terms governing the adoption and pricing of change orders.

Performance and Payment Bonds: The contract must include a provision requiring the selected offeror to furnish the awarding authority with a payment bond and a performance bond of a surety company qualified to issue bonds in the Commonwealth and satisfactory to the awarding authority, each in the sum of the contract price. [G.L. c.149, §44E].

Foreign Corporations: Any contractor incorporated outside of Massachusetts must certify compliance with certain corporation laws. The awarding authority must notify the Secretary of State of the Commonwealth and the Department of Revenue whenever a contract is awarded to an out-of-state corporation. [G.L. c.30, §39L].

Payment procedures: The contract must contain statutory language governing payment procedures. [G.L. c.30, §39K].

Financial reporting: Contractors must agree to keep certain financial records, make them available for inspection by State agencies, and file periodic financial reports. [G.L. c.30, §39R].

Auditor's certification: The contract must contain a certification by the municipal auditor or accountant stating that appropriated funds are available for the contract and that the official signing the contract has been authorized to do so. [G.L. c.44, §31C].

Liability insurance: The awarding authority may either require the vendor to provide project insurance, covering both the vendor and the awarding authority, or it may arrange to insure itself separately.

Dispute resolution: Although not required by statute, the contract should provide a mechanism for the resolution of disputes which arise during the project.

Tax compliance: Any person contracting with a municipality must certify in writing that he or she has complied with State tax laws. [G.L. c.62C, §49A].

Liquidated damages: The awarding authority may include a provision for imposing liquidated damages on the contractor for late completion.

Step 2: Advertise for Proposals

An invitation for proposals must be published in the Central Register and in a local newspaper at least two weeks prior to the proposal deadline, and must be posted in the offices of the awarding authority at

least one week prior to the deadline. [G.L. c.149, §44J]. The advertisement should describe the overall project in sufficient detail to allow offerors to determine whether they are qualified and wish to submit proposals, state when and where RFPs can be obtained, the deadline and place for submission of proposals, and the time and place for the opening of proposals.

If a pre-proposal meeting will be held, the advertisement should provide the time and place of that meeting.

Step 3: Open and Evaluate Proposals

Evaluators

Proposals are not to be opened publicly, and the contents are to be kept confidential and not disclosed to competing offerors until the completion of the evaluation, or until the time for acceptance specified in the RFP, whichever occurs first. The non-price proposals must be opened at the time specified in the RFP in the presence of one or more witnesses. A register of proposals must be prepared, and made available for public inspection. The price proposals may be opened at a later time, and must be kept separate so that price information is not disclosed to the individuals preparing evaluations. [G.L. c.149, §44E(4)].

The awarding authority must designate an individual or group of individuals to prepare a written evaluation of each proposal based solely on the criteria contained in the RFP. We recommend the use of a committee rather than an individual to evaluate proposals, both to guard against favoritism or personal bias and to provide a wider range of knowledge and experience. It is particularly important to include a qualified design professional in the process to ensure that the evaluations take into account all of the technical criteria in the RFP. If you rely on an outside consultant for advice, we recommend that the consultant not be a member of the evaluation committee, but rather report to the committee.

Responsiveness

After opening the non-price (or, as they are often called, technical) proposals, the evaluators should first examine each proposal to determine whether it includes all of the submissions required by the RFP (see pages 76 - 79 of this chapter), and therefore qualifies as a responsive proposal. A responsive proposal must include all of the requisite forms and certificates, the proposed plans and specifications, and a statement that the offeror can complete the project by the deadline. Any proposal which fails to include required information or documentation is non-responsive, and should be eliminated at the outset.

Evaluators should consider only responsive proposals for a contract award. In determining the responsiveness of a proposal, however, the awarding authority must waive or allow the offeror to correct minor informalities. [G.L. c.149, §44E(4)]. Minor informalities are errors of form in a submission, which do not cast doubt on the intended meaning of the proposal or the qualifications of the offeror.[†] If a mistake and the intended offer are clearly evident in a proposal, the awarding authority must correct the mistake to reflect the offeror's intent, and so notify the offeror.^{††} In the event that a mistake is evident, but the correct intended offer is not, you may permit the offeror to withdraw the proposal.^{†††} [G.L. c.149, §44E(4)].

[†]For example, the omission of a unit price figure is a minor deviation which must be waived if the intended figure is readily ascertainable from other figures in the proposal.

^{††}For example, an offeror might mistakenly insert the same figure (\$1000) both as a unit price per square yard of carpeting and as a total price for 100 square yards. One of the figures is mistaken, and it is evident that in this example the unit price should be \$10.00. The offer should be corrected, and the offeror not permitted to withdraw.

^{†††}For example, an offeror might make a number of arithmetical errors -- incorrectly multiplying unit prices by estimated quantities, then adding the incorrect subtotals to arrive at a total price. The mistakes would be evident, but the intended offer is not. The awarding authority has the discretion to hold the offeror to the bottom line, or to permit withdrawal of the proposal.

The Rating Categories

After eliminating the non-responsive proposals, evaluators then proceed to evaluate responsive proposals according to the statutory scheme incorporated in c.149, §44E(4), which requires them to specify:

1. A rating of highly advantageous, advantageous, not advantageous, or unacceptable for each evaluation criterion, and the reason for this rating;
2. A composite rating, and the reasons for this rating;
3. Any recommendations for revisions to the proposed plan for providing modular buildings which should be obtained by negotiation prior to awarding a contract; and
4. Whether the modular buildings were or will be manufactured within the commonwealth, and if not, whether they were or will be manufactured within the United States.

The rating system embodied in this legislation discourages assigning numerical values to ratings. The evaluation process is intended to allow awarding authorities some flexibility to compare proposals on their technical merits, but does not call for evaluators to rank proposals according to any kind of point system which purports to provide a mathematically precise measure of quality.

We suggest that the rating categories can be effectively used by evaluators in the following way. For most evaluation criteria, the evaluators should use only two of the four rating categories: "advantageous" for those proposals which meet the standard specified in the RFP; "unacceptable" for those which fall short of that standard. For each criterion on which a proposal is rated "unacceptable", the evaluators have the discretion to determine whether changes in the offeror's proposal would render it "advantageous"; if so, the evaluators should note in the

written evaluation the necessary changes. The award of a contract should be conditioned on the negotiation of the changes noted in the evaluation, provided the offeror agrees to make these revisions without increasing the cost. [G.L. c.149, §44E(4)]. For example, a proposal might contain specifications which do not conform fully with State building code requirements. While such a proposal must be rated "unacceptable" with respect to compliance with the building code, the proposal need not be rejected if the necessary revisions to the proposed modulars can be negotiated so that the proposed buildings comply with the code.

For some criteria spelled out in the RFP you may afford evaluators the flexibility to consider proposals which fall in between a standard you identify as "advantageous" and a minimum requirement below which the proposal is "unacceptable". For example, you may state in the RFP that proposals will be evaluated according to the offeror's record of compliance with deadlines on projects listed in the update statement, and that a proposal will be rated "advantageous" if all recent projects were completed substantially on schedule; "not advantageous" if most but not all were completed substantially on schedule; and "unacceptable" if most were not completed substantially on schedule.

The fourth rating category, "highly advantageous", should rarely be used. The reason is that, as a rule, the performance specifications and other criteria set forth in your RFP should be an accurate description of the quality of construction and material that will serve your needs. A proposal which purports to offer higher quality exceeds your needs. It will therefore not be more desirable than one which simply meets your standards; "gold-plating" will not justify a higher price.

In rare circumstances, it may be appropriate to pay more for a modular building which exceeds your minimum standards. If, as to a specific standard, you have stated clearly in the RFP that a proposal which exceeds this standard in a specified way is desirable, you can rate a proposal which surpasses your minimum standard as "highly advantageous". If you use this rating for a specific standard, the evaluators should

clearly specify, in writing, their reasons for awarding a "highly advantageous" rating, explaining why and to what extent the proposal exceeds the minimum standard. This explanation will provide a basis for determining whether you should pay any difference in price between this proposal and others. (We caution you, however, to avoid the use of optional features as a system of awarding "extra credit" to offerors; the use of options invests undue discretion in the evaluators and undermines the basic principles of fair and open competition.)

Once ratings have been assigned on each criterion, evaluators should assign an overall rating for each proposal. The evaluators should explain in writing their reasons for their composite rating of each proposal. The reasons should reflect the relative importance of the evaluation criteria.

If any criterion identified in the RFP has been rated "unacceptable", the overall rating should likewise be "unacceptable" -- unless the evaluators have identified revisions which should be negotiated to render the proposal "advantageous " which respect to that criterion. The proposal might in that event be assigned a conditional overall rating of "advantageous"; what makes the rating conditional is that the specified revision must be successfully negotiated prior to the award of a contract.

A proposal with one or more ratings in the category "not advantageous" may be assigned the composite rating of "not advantageous." A proposal evaluated as "not advantageous" overall should be selected only if the offeror has proposed a significantly lower price than other, higher rated proposals, and this cost difference justifies accepting it in spite of the less than "advantageous" grade. The reasons for a "not advantageous" overall rating should therefore spell out the evaluators' conclusions about the extra risks or disadvantages of the proposal in order to provide a basis for deciding whether a low price should result in awarding the contract to that offeror.

On the other hand, a composite rating of "highly advantageous" suggests that it would be worthwhile to pay a somewhat higher price than

the best offer from any proposal rated "advantageous". Therefore, the reasons for an overall rating of "highly advantageous" should spell out the evaluators' conclusions about the extra benefits of the "highly advantageous" proposal, to provide a basis for deciding whether a significantly higher price is worth paying. Two points bear emphasizing: First, evaluators should not assign a rating of "highly advantageous" to any criterion unless the RFP identifies a basis for a "highly advantageous" rating for that criterion. Second, a composite rating of "highly advantageous" is inappropriate unless the proposal has received a "highly advantageous" rating on at least one evaluation criterion.

If all acceptable proposals receive an overall rating of "advantageous", the contract should ordinarily be awarded to the proposal offering the lowest price. This is a rule of common sense. If two proposals are both "advantageous" -- that is, they both meet all of your needs -- then the clearest and most practical way to distinguish the better proposal is by price.

Using the Update Statement

In the evaluation, you should focus on the information provided by each offeror in its DCPO update statement. This form contains information and references for recently completed and current projects. An awarding authority may, and should, contact these references to learn about the offeror's performance on these projects. The evaluators have the discretion to decide, based solely on information obtained from the update statement and from these references, that the offeror lacks the necessary qualifications to complete the project successfully, and is therefore not a responsible offeror. [G.L. c.149, §44A(1)]. Should you decide to disqualify an offeror, the reasons should be documented in the evaluation.

Alternatively, a review of the update statement may raise doubts about an offeror's qualifications, but the evaluators may decide that disqualification is not warranted. The modular procurement procedures allow evaluators to assign ratings to offerors' qualifications (provided

the RFP specifies what standards you will apply, based on information in the update statement) and to consider the relative ratings in this category when you choose the most advantageous proposal.

It is important to note that the DCPO certificate of eligibility and the update statement information are the only permissible measures of an offeror's qualifications. The State's contractor pre-qualification system is designed to provide fair and uniform standards for ensuring that all contractors performing work on public building projects have the necessary skills, experience, and integrity. Your modular building RFP cannot specify additional contractor qualification standards, such as some "number of years experience in modular construction".

Price

Price proposals must be evaluated separately.[†] Evaluators^{††} will first determine whether each price proposal meets the submission requirements and includes the required bid deposit. Non-responsive price proposals must be eliminated from consideration. Evaluators will then compare the proposal price with the single project maximum on the offeror's DCPO certificate of eligibility, and with the offeror's aggregate rating limit, to ascertain whether the offeror is eligible for a contract award.

The goal of the evaluation will be to ensure that each proposal under consideration complies with all program requirements, that the quality of the modular building components, systems, equipment, and materials in each proposal meets minimum standards, and that each

[†]You may defer opening the price proposals until the technical proposals have been evaluated. Alternatively -- in order to avoid the wasted effort of fully evaluating the technical proposal of an offeror whose price proposal is non-responsive -- you may have price proposals opened and reviewed for responsiveness. This review must be conducted by people other than the evaluators of the technical proposals.

^{††}Unless and until the evaluation of technical proposals is complete, you cannot use the same people to evaluate technical and price submissions.

contractor has the necessary qualifications to complete the project successfully. In general, the proposal which meets all of your requirements (or would meet those requirements with the revisions noted in the evaluation) at the lowest cost will be the most advantageous proposal.[†]

Step 4: Negotiate and Award the Contract

The awarding authority may condition the award on successful negotiation of any revisions recommended in the evaluation, as discussed in the previous section. You should note that these negotiations are limited in scope. The only items that are subject to negotiation are the specific revisions noted by the evaluators during the evaluation process. Contract terms, scope of work, and price are not subject to negotiation. The awarding authority cannot agree to pay more than the offeror's proposal price for changes needed to make the proposal comply with the performance specifications or other minimum standards set by the RFP. [G.L. c.149, §44E(4)]. Nor can the awarding authority adjust the price indirectly (for example, by reducing the scope of work, or of the contractor's responsibilities, or the quality of the product). To allow one offeror to change a firm, fixed price or any other term of the RFP would violate the precepts of fair competition.

If any of the proposal revisions recommended by the evaluators are not included in the contract, the reasons for omitting them must be stated in writing. [G.L. c.149, §44E(4)].

If the contract is not awarded to the offeror who submitted the lowest price, the awarding authority must explain the reasons for the

[†]G.L. c.149, §44E(4) requires an awarding authority to give preference, other considerations being equal, first to modular buildings manufactured within Massachusetts, and second to modular buildings manufactured outside of Massachusetts but within the United States. As a practical matter, it is unlikely that two proposals will be equally advantageous in all respects, including price. For this reason, the geographic preference will rarely be the decisive factor in selecting a proposal.

award in writing, and must maintain this explanation in its files for at least six years from the date of final payment under the contract. [G.L. c.149, §44E(4)].

Under the State building code regulations, the plans for a modular building must be reviewed and approved by a licensed Third Party Inspection Agency before a building permit can be issued. [780 C.M.R. 111.4]. We recommend that the contract award be conditioned upon the contractor's obtaining third party approval of the plans within a set period of time (30 to 60 working days is within reason) after notification of contract award.[†] The contractor must make any revisions in the plans necessary to obtain third-party approval, and cannot increase the proposal price to cover the cost of required changes.

The Construction Phase

The role of the awarding authority in overseeing the site preparation work, the construction of foundations, the installation and assembly of the modular units, and the attachment to utilities should closely parallel the supervision of a conventional construction project. Chapter Five of this manual presents a discussion of the construction phase of a building project, which can also serve as a useful guide for supervising a modular project.

You should bear in mind that in a conventional construction project, the design contract often calls for the architect to play a role in the project supervision and interpretation of specifications during the construction phase. Similarly, in a modular project, it may be advisable to hire a project manager who is knowledgeable and experienced in modular construction, to ensure that specifications are followed. The designer

[†]It will generally take up to 30 days and sometimes longer for a review of the plans and approval by the Third Party Inspection Agency. In planning a modular project, you should allow adequate time for this review between the selection of a proposal and the award of the contract.

selection procedures described in Chapter 2 of this manual apply to the hiring of a project manager.

More Questions and Answers

Do we have to follow the modular procurement procedures if we decide to have a modular building installed under a lease arrangement, rather than purchasing it?

Yes. The modular statute defines "procurement" to include buying, purchasing, or otherwise acquiring and installing a modular building. Even if the acquisition and installation of the building is accomplished through a lease, the procurement procedures will apply. [G.L. c.149, §44E(4)]. All of the terms and conditions of any such lease arrangement must be included in the RFP.

If you request proposals for the lease or lease/purchase of modulars, two possible complications may arise with respect to price comparison:

(1) The price proposals for leased modulars will consist of a series of payments over a given period of time. In order to compare the price proposals realistically, you will have to use a formula for calculating the discounted present value for payments to be made over time. The formula should be included in the RFP.

(2) You cannot solicit prices for different lease periods. For example, you cannot ask offerors to provide price alternatives for one year, two years, and three years. This kind of solicitation in effect leaves open a significant specification -- the duration of the lease -- until the offers have been unveiled. Fair competition is impossible when a specification is finally determined only after the proposals are opened.

Must we follow the formal proposal procedures for modular construction in an emergency situation?

The normal proposal procedures can be dispensed with only for the work that is necessary to preserve the health or safety of persons or property in an extreme emergency. [G.L. c.149, §44A(4)]. The prior approval of DCPO is required unless the urgency of situation makes it impossible to contact DCPO in advance. In that event, emergency work can be started, but DCPO must be notified as soon as possible.

You should note that not every urgent situation meets the statutory definition of an emergency. See pages 55 - 56 of this manual for more information on what constitutes an emergency for the purpose of waiving competitive bidding or proposal requirements.

How should we award contracts for the repair or maintenance of an existing modular building?

The designer selection and construction bidding laws described in Chapters 2, 3, and 4 of this manual must be followed for repair or maintenance of modular buildings (unless the work is performed under a warranty agreement included in the original procurement)

THIS DOCUMENT IS A MODEL REQUEST FOR PROPOSALS FOR MODULAR CONSTRUCTION. THE [BRACKETED] INFORMATION IS PROVIDED AS INSTRUCTIONS AND SHOULD NOT FORM THE TEXT OF AN RFP.

MODEL REQUEST FOR PROPOSALS FOR
MODULAR CONSTRUCTION

Part I -- Introduction

Pursuant to G.L. c.149, §44E(4), the Town/City of _____ requests proposals from qualified contractors for the design, prefabrication, site assembly/installation, and all services required to complete and deliver _____ modular building units ready for use and occupancy.

The Town/City will consider only responsive proposals from responsible contractors for a contract award. A responsive proposal is one which complies fully with all submission requirements stated in Part IV of this Request for Proposals (RFP). Any proposal which does not comply with all submission requirements will be rejected as non-responsive. A responsible contractor is one who demonstrably possesses the skill, ability, and integrity necessary to faithfully perform the work called for in this procurement, judged solely on the basis of the contractor's DCPO Certificate of Eligibility for modular construction, and information about the contractor's performance on recent and current projects, which must be listed in the DCPO Update Statement.

Each responsive proposal from a responsible contractor will be evaluated solely according to the criteria set forth in Part V of this RFP, "Evaluation Criteria". Each proposal will be assigned a rating of HIGHLY ADVANTAGEOUS, ADVANTAGEOUS, NOT ADVANTAGEOUS, or UNACCEPTABLE with respect to each criterion, and the reasons for each rating will be set forth in writing. A composite rating for each proposal will be set forth in writing, along with the reasons for the rating. The evaluation committee will determine the most advantageous proposal from a responsible

THIS DOCUMENT IS A MODEL REQUEST FOR PROPOSALS FOR MODULAR CONSTRUCTION. THE [BRACKETED] INFORMATION IS PROVIDED AS INSTRUCTIONS AND SHOULD NOT FORM THE TEXT OF AN RFP.

and responsive offeror, taking into consideration price and ratings on the evaluation criteria contained in this RFP. If the contract is awarded to an offeror who did not submit the lowest price, the evaluation committee will set forth a written explanation of the reasons for the award.

In determining the most advantageous proposal, the Town/City shall give preference, other considerations being equal, first to modular buildings manufactured within Massachusetts, and second to modular buildings manufactured outside of Massachusetts but within the United States.

Proposals will not be opened publicly, but will be opened in the presence of one or more witnesses at the time stated below. The contents of proposals shall remain confidential, and shall not be disclosed to competing offerors until the completion of the evaluation, or until the maximum time for acceptance, as stated below. At the opening of proposals, the Town/City shall prepare a register of proposals for public inspection.

An offeror may correct, modify, or withdraw a proposal by written notice received in the office designated herein for proposal submission prior to the time set for the opening of proposals. After the opening, a contractor may not change the price or any other provision of the proposal in a manner prejudicial to the interest of the Town/City, or to fair competition. The Town/City shall waive minor informalities or allow the offeror to correct them. If a mistake and the intended offer are clearly evident on the face of the document, the Town/City shall correct the mistake to reflect the intended correct offer and so notify the offeror in writing, and the offeror may not withdraw the offer. The Town/City may permit an offeror to withdraw an offer if a mistake is clearly evident on

THIS DOCUMENT IS A MODEL REQUEST FOR PROPOSALS FOR MODULAR CONSTRUCTION. THE [BRACKETED] INFORMATION IS PROVIDED AS INSTRUCTIONS AND SHOULD NOT FORM THE TEXT OF AN RFP.

the face of the document but the intended correct offer is not similarly evident.

Each proposal submitted in response to this RFP is subject to all of the contract terms set forth in Part VI, "Contract Terms", and any contract awarded will incorporate all of these contract terms.

The Town/City reserves the right to cancel this procurement at any time before a contract is executed and approved, in which event the Town/City will reject all proposals received in response to this RFP.

All proposals are to be submitted no later than the deadline stated in Part IV, "Submission Requirements", and the non-price submissions will be opened at that time. Every proposal must be in two parts, submitted in two separate, clearly marked, sealed envelopes: 1. non-price information, and 2. price, in accordance with all submission requirements set forth in Part IV of this RFP. LATE PROPOSALS WILL NOT BE ACCEPTED.

The Town/City shall award a contract by written notice to the selected offeror by no later than _____, unless the time for contract award is extended by mutual agreement between the Town/City and the selected offeror. The award of a contract will be conditioned on the contractor obtaining the approval of the modular building plans by a licensed Third Party Inspection Agency within ____ days from the date of notification of award. The contractor will make all revisions required to obtain plan approval without increasing the proposal price.

Work is to start ____ days from the date of notification of award under this RFP, and the contractor's performance under the contract must be completed within ____ days from the date of notification of award.

THIS DOCUMENT IS A MODEL REQUEST FOR PROPOSALS FOR MODULAR CONSTRUCTION. THE [BRACKETED] INFORMATION IS PROVIDED AS INSTRUCTIONS AND SHOULD NOT FORM THE TEXT OF AN RFP.

All inquiries from prospective offerors concerning this RFP must be submitted in writing and addressed to _____. Inquiries must be received no later than _____. All responses to questions shall be in writing and will be simultaneously distributed to all recipients of the RFP, and made available to all interested parties.

Part II -- Program Summary

[The Program Summary will include a description of the space needed, its function, minimum area, and any special requirements. This section will also refer to the program itself, which should be appended to the RFP. See page 75 of this chapter for a discussion of the information to be included in this section.]

Part III -- Scope of Work

The contractor's responsibilities will include all of the following:

[This section will completely describe the scope of the work under the contract, which may include some or all of the following work:

- * Design and fabrication of modular units in accordance with all performance specifications set forth in Part V of this RFP, and in accordance with all program requirements and applicable building codes;
- * Site design in accordance with all performance specifications set forth in Part V of this RFP, and in accordance with all program requirements and applicable building codes;

THIS DOCUMENT IS A MODEL REQUEST FOR PROPOSALS FOR MODULAR CONSTRUCTION. THE [BRACKETED] INFORMATION IS PROVIDED AS INSTRUCTIONS AND SHOULD NOT FORM THE TEXT OF AN RFP.

- * All site clearance and site preparation work, including grading, tree and stump removal, and relocation of power lines and underground utilities, if required;
- * Construction of concrete footings in accordance with the performance specifications set forth in Part V of this RFP;
- * Delivery of all modular units and construction materials to the construction site;
- * Obtaining all permits required for the transportation of modular units from the factory to the construction site;
- * Obtaining review and approval of all plans by a licensed Third Party Inspection Agency;
- * Obtaining all required building permits;
- * Complete installation and assembly of modular units in accordance with all performance specifications in Part V of this RFP and all applicable building codes;
- * The connection of all electrical, water, and sanitary service;
- * Obtaining all use and occupancy permits;
- * Finish grading and removal of all debris from the site;
- * All repairs and corrective work required by applicable warranties.]

Part IV -- Submission Requirements

[This section will include instructions for submitting a responsive proposal. It should list all documents and information that each proposal must contain.] The Town/City will review all proposals, and identify any proposals which do not meet the submission requirements set forth in this section. Such proposals will be deemed non-responsive, and will be rejected.

THIS DOCUMENT IS A MODEL REQUEST FOR PROPOSALS FOR MODULAR CONSTRUCTION. THE [BRACKETED] INFORMATION IS PROVIDED AS INSTRUCTIONS AND SHOULD NOT FORM THE TEXT OF AN RFP.

All proposals are to be delivered to _____, no later than _____ a.m., on _____. Non-price submissions will be opened at that time. The Town/City will select a contractor no later than _____. LATE PROPOSALS WILL NOT BE ACCEPTED.

[If a pre-proposal meeting and/or site visit is required, the following information must be provided.]

A pre-proposal meeting will be held at _____, on _____ at ____ a.m. Attendance at this pre-proposal meeting is mandatory, and any proposal submitted by an offeror who was not present at this meeting will be rejected as non-responsive.

All offerors are required to visit the site before submitting a proposal. Submission of a proposal constitutes an acknowledgement that the offeror has examined the site and is familiar with existing conditions.

Every proposal must be in two parts, submitted in two separate, clearly marked, sealed envelopes: 1. non-price information, and 2. price.

The following information must appear on each envelope:

Contractor's Name:

Project Name:

Either "Non-price Submission", or "Price Submission".

The non-price submission for every proposal must consist of the following documents, and any proposal which does not contain all of these documents will be rejected as non-responsive:

1. Current Certificate of Eligibility for Modular/Prefab Construction, DCPO Form CQ7 (DCPO, One Ashburton Place, Boston, MA 02108).

THIS DOCUMENT IS A MODEL REQUEST FOR PROPOSALS FOR MODULAR CONSTRUCTION. THE [BRACKETED] INFORMATION IS PROVIDED AS INSTRUCTIONS AND SHOULD NOT FORM THE TEXT OF AN RFP.

2. Contractor Eligibility Update Statement, DCPO Form CQ3 (DCPO, One Ashburton Place, Boston, MA 02108).

3. Certification by the State Board of Building Regulations and Standards, showing that the manufacturer of the modular buildings meets State building code requirements.

4. A set of detailed plans and specifications for the proposed modular buildings. Proposals must include all manufacturer's specifications governing the materials and equipment used in the modular buildings. The plans submitted with each proposal must provide all drawings necessary to portray to the Town/City all pertinent design details of the modular buildings and the passageways connecting them to existing buildings, including:

(a) An installation plan showing the proposed accurate location of the modular buildings on the property with appropriate tie dimensions to the existing buildings; an indication of the locations on the modular buildings at which utility service connections are proposed; locations of existing utility services to which the proposed modular buildings can be connected.

(b) Mounting plans and details.

(c) Architectural type floor plans.

(d) Factory plans and details of passageway elements and entrance ramps.

(e) Factory plans and details of manufacture of structural elements including floors, walls, and roof.

(f) Factory plans and details of service appurtenances including electrical, plumbing, HVAC, fire protection, and communications systems. Such details must include all light fixtures, outlets, switches, controls, smoke detectors, and location and capacity/rating of all equipment, fixtures, and appliances.

THIS DOCUMENT IS A MODEL REQUEST FOR PROPOSALS FOR MODULAR CONSTRUCTION. THE [BRACKETED] INFORMATION IS PROVIDED AS INSTRUCTIONS AND SHOULD NOT FORM THE TEXT OF AN RFP.

(g) Factory details of windows and doors.

(h) Factory finish details for wall finishes, floor finishes, exterior skin finish, and trim.

5. The complete terms of all warranties provided by the manufacturer or by the offeror relative to the design, manufacture, and installation of the modular buildings, including both general warranties, and special warranties associated with particular components and equipment.

6. Certification of financial interest disclosure and of non-collusion, signed and submitted on Form ____ appended to this RFP.

7. Certification that the offeror can furnish labor that can work in concert with other elements of labor employed at the installation site, signed and submitted on Form ____ appended to this RFP.

8. Certification of compliance with the registration requirements for foreign corporations, under G.L. c.30, §39L, signed and submitted on Form ____ appended to this RFP.

9. Certification of compliance with State tax laws, as required by G.L. c.62C, §49A, signed and submitted on Form____ appended to this RFP.

10. Certification that the proposed modular buildings will be (1) manufactured within Massachusetts, or (2) manufactured outside of Massachusetts but within the United States, or (3) manufactured outside of the United States, signed and submitted on Form____ appended to this RFP.

THIS DOCUMENT IS A MODEL REQUEST FOR PROPOSALS FOR MODULAR CONSTRUCTION. THE [BRACKETED] INFORMATION IS PROVIDED AS INSTRUCTIONS AND SHOULD NOT FORM THE TEXT OF AN RFP.

11. Certification that the proposed modular building plans comply with all building codes; that the offeror will, if accepted for a contract award, obtain approval of the plans by a licensed Third Party Inspection Agency within ____ working days of the notice of award; and that the offeror will make any revision required to obtain such approval without increasing the proposal price, signed and submitted on Form____ appended to this RFP.

12. Letter of transmittal, signed by an individual authorized to bind the offeror contractually, certifying that the offeror will, if accepted for a contract award, execute a contract in accordance with the terms of this proposals within ____ working days of the notice of award, and will furnish to the Town/City a payment bond and a performance bond, each in the sum of the contract price, as required by G.L. c.149, §44E, signed and submitted on Form____ appended to this RFP.

13. Certification that the offeror, if awarded a contract, will guarantee completion of all work required within ____ days from the date of notification of award, signed and submitted on Form____ appended to this RFP.

The price submission for every proposal must consist of the following documents, and any proposal which does not contain all of these documents will be rejected as non-responsive:

1. A firm, fixed price which includes the furnishing of all materials, services, labor, performance and payment bonds, insurance, and other costs incurred in the performance the contract, signed by

THIS DOCUMENT IS A MODEL REQUEST FOR PROPOSALS FOR MODULAR CONSTRUCTION. THE [BRACKETED] INFORMATION IS PROVIDED AS INSTRUCTIONS AND SHOULD NOT FORM THE TEXT OF AN RFP.

an individual authorized to bind the offeror contractually, and submitted on Form___ appended to this RFP.

2. A bid deposit, in the amount of ___% of the total contract price, in the form of_____.

Part V -- Evaluation Criteria

Proposals which meet all of the submission requirements in Part IV of this RFP will be evaluated and rated solely on the basis of the evaluation criteria contained in this section. In evaluating each proposal, the evaluation committee shall assign a rating of HIGHLY ADVANTAGEOUS, ADVANTAGEOUS, NOT ADVANTAGEOUS, or UNACCEPTABLE for each of the criteria. A rating of ADVANTAGEOUS shall be given when a proposal meets the standards set forth in the evaluation criteria. A rating of UNACCEPTABLE shall be assigned to a proposal which does not meet evaluation standards and which cannot be accepted without revisions in the proposal. The evaluation committee may identify any revisions necessary to change a rating on a criterion from UNACCEPTABLE to ADVANTAGEOUS and shall specify such changes in writing. The award of a contract to any offeror whose proposal was rated UNACCEPTABLE with respect to one or more criteria will be conditioned on the negotiation of the revisions recommended by the evaluation committee at no increase in the proposed price. A rating of NOT ADVANTAGEOUS or HIGHLY ADVANTAGEOUS will be assigned only on criteria which this RFP specifically notes may receive these ratings. A proposal will be not be rated higher than ADVANTAGEOUS for offering features in addition to those requested in the RFP or for exceeding the standards specified in the evaluation criteria.

THIS DOCUMENT IS A MODEL REQUEST FOR PROPOSALS FOR MODULAR CONSTRUCTION. THE [BRACKETED] INFORMATION IS PROVIDED AS INSTRUCTIONS AND SHOULD NOT FORM THE TEXT OF AN RFP.

The evaluation committee shall determine a composite rating of HIGHLY ADVANTAGEOUS, ADVANTAGEOUS, NOT ADVANTAGEOUS, or UNACCEPTABLE for each proposal. Each composite rating shall be justified in writing. After a composite rating has been determined for each proposal on the basis of the evaluation criteria in this section, the evaluation committee shall review the price proposals and determine the most advantageous proposal, taking into consideration the ratings on all evaluation criteria and the price. If the evaluation committee selects a proposal which is not the least expensive, the evaluation committee shall explain in writing why the added benefits of the proposal justify the higher fee proposed by the offeror.

Each responsive proposal will be assigned a rating for each of the following evaluation criteria:

[This section must include all criteria by which proposals will be evaluated. The following categories of criteria are recommended for the typical municipal procurement.]

1. The offeror's qualifications to perform the work, to be evaluated solely on the basis of performance on projects undertaken or completed after the most recent renewal of the contractor's DCPO Certificate of Eligibility. Proposals will be assigned a rating for each of the following criteria in this category:

- (a) Finished product quality and compliance with construction specifications.
- (b) Completion of project within budget.
- (c) Compliance with project schedule.

For each of the criteria in this category, a proposal will be rated ADVANTAGEOUS if the offeror's performance on all projects

THIS DOCUMENT IS A MODEL REQUEST FOR PROPOSALS FOR MODULAR CONSTRUCTION. THE [BRACKETED] INFORMATION IS PROVIDED AS INSTRUCTIONS AND SHOULD NOT FORM THE TEXT OF AN RFP.

substantially complies with contract requirements; NOT ADVANTAGEOUS if the offeror's performance on most but not all projects substantially complies with contract requirements; and UNACCEPTABLE if the offeror's performance on most projects does not substantially comply with contract requirements.

2. Compliance with all applicable building code requirements. Proposals which meet all building code requirements will be rated ADVANTAGEOUS; proposals which fail to meet any requirement will be rated UNACCEPTABLE.

3. Compliance with all performance specifications listed in this section. Proposals which meet all performance specifications will be rated ADVANTAGEOUS; proposals which fail to meet any performance specification will be rated UNACCEPTABLE.

[The RFP must specify in detail all standards for evaluating the acceptability of construction materials, fixtures, and systems, based on performance ratings which measure such qualities as strength, capacity, durability, flammability, R-value, etc. Performance specifications should be prepared with close attention to the State building code requirements for:

Foundations, or concrete footings, anchoring and skirting.

Exterior stairs, entrance ramps, and corridors.

Floors - joists, bottom board, insulation, subflooring, weight load capacity, floor coverings.

Walls - studs, insulation, composition, siding, weight load capacity, wind load capacity, ceiling height, sound proofing, interior finishes.

Roof - composition, sheathing, framing, weight load capacity, pitch, insulation, eaves and downspouts, ceiling materials.

THIS DOCUMENT IS A MODEL REQUEST FOR PROPOSALS FOR MODULAR CONSTRUCTION. THE [BRACKETED] INFORMATION IS PROVIDED AS INSTRUCTIONS AND SHOULD NOT FORM THE TEXT OF AN RFP.

Doors - number, size, construction of frames, materials, weatherstripping, lockset and hardware details.

Windows - number, size, construction of frames, glazing, weatherstripping, screens , lock and hardware details.

HVAC Systems - functional requirements for and description of heating, ventilation, and cooling systems.

Plumbing - requirements for supply, waste, and vent lines, and fittings; size, type, and capacity of water heaters, description of plumbing fixture requirements, including sinks, water closets, water fountains.

Electrical Systems - service requirements, capacity, outlets.

Lighting - illumination requirements, type of fixtures.

Fire Protection - alarms, smoke detectors, sprinkler systems.

Miscellaneous - communication systems, exit signs, tack boards, chalkboards, special features.]

4. Compliance with warranty specifications contained in this section. Proposals which meet all warranty specifications will be rated ADVANTAGEOUS; proposals which fail to meet any warranty specification will be rated UNACCEPTABLE.

[The awarding authority should specify warranty terms relative to the entire product and installation, as well as special warranties associated with particular components or equipment.]

5. Compliance with all program requirements. Proposals which meet all program requirements will be rated ADVANTAGEOUS; proposals which fail to meet any program requirement will be rated UNACCEPTABLE.

[The awarding authority should refer to the building program, which should be attached and incorporated by reference to the RFP.]

THIS DOCUMENT IS A MODEL REQUEST FOR PROPOSALS FOR MODULAR CONSTRUCTION. THE [BRACKETED] INFORMATION IS PROVIDED AS INSTRUCTIONS AND SHOULD NOT FORM THE TEXT OF AN RFP.

Part VI -- Contract Terms

[All contract terms and conditions must be included in the RFP. Each municipality should request its legal counsel to develop a standard contract for modular procurement, which will be a complex document. See pages 81 - 82 of this chapter for a discussion of some contract provisions you should be aware of.

Contract terms are not subject to negotiation. It is not permissible to request offerors to propose a contract, or to allow an offeror to reject the terms of the contract contained in the RFP.]

Any contract awarded on the basis of this RFP will be subject to all of the contract terms in this section. Any proposal which contains different or additional contract terms will be rejected as non-responsive.

APPENDIX A
DIRECTORY OF STATE AGENCIES

This directory lists the major State agencies which are involved in the public construction process. Feel free to contact them for further information and advice.

Division of Capital Planning and Operations (DCPO)

Supervises design and construction of State building projects; prequalifies contractors; issues emergency waivers for construction.

Contact: Division of Capital Planning and Operations
1 Ashburton Place
Boston, Mass. 02108

(617) 727-4053 (General Counsel)
(617) 727-4047 (Contractor Certification)

Designer Selection Board (DSB)

Selects designers for State building projects, and for municipal projects on request; issues guidelines for designer selection procedures.

Contact: Designer Selection Board
1 Ashburton Place
Boston, Mass. 02108

(617) 727-4046 (Executive Director)

Department of Labor and Industries (DLI)

Hears protests on alleged violations of design and construction laws; establishes prevailing wage rates.

Contact: Department of Labor and Industries
100 Cambridge Street
Boston, Mass. 02202

(617) 727-3457 (General Counsel)

Secretary of the Commonwealth

Publishes the Central Register.

Contact: Secretary of the Commonwealth
Regulations Division
State House, Room 74
Boston, Mass. 02133

(617) 727-6772

Office of the Inspector General (OIG)

Provides advice and assistance to public agencies; investigates complaints and allegations of wrongdoing.

Contact: Office of the Inspector General
1 Ashburton Place
Boston, Mass. 02108

(617) 727-9140 (General information)
(800) 322-1323 (Confidential 24-hour hot line)

Department of Public Works (DPW)

Oversees and provides funding for certain highway construction projects.

Contact: Department of Public Works
10 Park Plaza
Boston, Mass. 02116

(617) 973-7500 (Public information)

Executive Office of Communities and Development (EOCD)

Oversees and provides funding for certain public housing projects.

Contact: Executive Office of Communities and Development
100 Cambridge Street
Boston, Mass. 02202

(617) 727-5885 (Bureau of Housing Development)

Executive Office of Energy Resources (EOER)

Approves energy system life-cycle studies and provides information on funding for energy conservation.

Contact: Executive Office of Energy Resources
100 Cambridge Street
Boston, Mass. 02202

(617) 727-4732 (General information)

Executive Office of Public Safety

Regulates State building code requirements, maintains current list of Massachusetts certified producers of manufactured buildings and list of licensed Third Party Inspection Agencies for Massachusetts Manufactured Building Program.

Contact: Executive Office of Public Safety
State Board of Building Regulations and Standards
One Ashburton Place, Room 1301
Boston, MA 02108

(617) 727-3200



APPENDIX B
STATUTORY AND REGULATORY CITATIONS

This appendix lists the various State statutes and regulations which directly affect the public construction process at the municipal level. The complete text of these statutes and regulations can be found in any law library and in most municipal libraries.

Statutes (references are to the 1984 Official Edition of the General Laws)

Chapter 7

- Sec. 38A $\frac{1}{2}$ Design services for public buildings; definitions.
- Sec. 38B Designer selection board.
- Sec. 38C Powers and duties of board.
- Sec. 38D Advertisements of contracts for design services.
- Sec. 38E Statements by designers filed with board; applications for design contracts.
- Sec. 38F Criteria for selection of semi-finalists and finalists; lists of finalists.
- Sec. 38G Appointment of designers from lists of finalists.
- Sec. 38H Lists of consultants of applicants; truth-in-negotiations certificates; requirements of contracts for designers' services.
- Sec. 38I Appointment of designer for extended services.
- Sec. 38J Selection of designer in emergency situations.
- Sec. 38K Designer selection procedure for contracts in excess of \$10,000.
- Sec. 38L Reports of board.
- Sec. 38M Annual report of board.
- Sec. 38N Regulations.

Chapter 30

- Sec. 39F Method of payment to subcontractors under certain public works contracts; deposit of amounts in dispute; proceedings to enforce claims to amounts on deposit.
- Sec. 39G Payment of sums due contractors after completion of certain public works contracts regulated.
- Sec. 39I Work to conform with plans and specifications; deviations; certificate; penalties.
- Sec. 39J Review of decisions involving questions arising under public construction contracts.
- Sec. 39K Method of prompt payment to contractors on contracts for construction, etc., of buildings by Commonwealth, etc.
- Sec. 39L Performance of public construction work by foreign corporations and others residing outside of Commonwealth.

Chapter 30 (continued)

- Sec. 39M Award of contracts for construction, materials, etc.; specifications; definitions; applicability of section.
- Sec. 39N Adjustment of contract price where site conditions differ substantially or materially from conditions indicated in plans or contract documents.
- Sec. 39O Awarding authority may order general contractor to suspend, delay, etc., work; adjustment in contract price; submission of claims.
- Sec. 39P Time for decision by awarding authority, etc. on interpretation of specifications, approval of equipment, etc.
- Sec. 39R Award of contracts; accounting statements; annual financial statements; definitions.
- Sec. 40 Discharge and substitution of bonds, etc., given to Commonwealth.

Chapter 43

- Sec. 29 Mayor or city manager to approve certain contracts; surety bond, etc.

Chapter 44

- Sec. 31C Payment for certain public construction contracts not barred by reason of being in excess of appropriations.

Chapter 149

- Sec. 26 Preference to veterans and citizens in public work; rate of wages.
- Sec. 27 List of jobs; classification; determination of rate of wages; schedule; penalty.
- Sec. 27A Appeal from wage determination or classification of employment.
- Sec. 27B Records to be kept by contractor, etc.
- Sec. 27C Penalties for violations of secs. 26-27B.
- Sec. 27D Words "construction" and "constructed" to include additions, alterations and certain preliminary work.
- Sec. 27F Agreements, etc., for rental of trucks and other equipment for use on public works to contain stipulation requiring payment of determined wages to operators.
- Sec. 28 Actions against cities or towns for labor.
- Sec. 29 Security for payment of labor, materials, charges, etc., on certain public works; filing of claim; petition, hearing, etc.
- Sec. 29B Agreement between owner and contractor to waive required payment bond as constituting false and deceptive act; defense.
- Sec. 29C Indemnification provision void and unenforceable as against public policy.

Chapter 149 (continued)

- Sec. 30 Eight hour day and forty-eight hour week for certain public employees; exception.
- Sec. 31 Eight hour day for certain employees in certain cities and towns.
- Sec. 32 Definitions.
- Sec. 33 Limitations of secs. 30 and 31.
- Sec. 34 Contracts for public works to contain stipulation as to eight hour day, etc.; exception; certain contracts void.
- Sec. 34A Contractors on public works to provide insurance under workmen's compensation law.
- Sec. 34B Compensation paid to reserve police officers by contractors on public works.
- Sec. 34C Application of secs. 30, 34 and 35.
- Sec. 35 Penalty for violating secs. 30, 31, or 34.
- Sec. 37 Nine hour day in certain cities and towns.
- Sec. 44A Award of contracts for construction, etc., of public buildings; definitions; posting bond.
- Sec. 44B Plans and specifications for bidding purposes; bid deposits.
- Sec. 44C List of debarred contractors; debarment procedure.
- Sec. 44D Right to reject bids reserved.
- Sec. 44E General bids.
- Sec. 44E(4) Modular construction procedures.
- Sec. 44F Specifications for contracts; sub-bids.
- Sec. 44G Allowances; alternates in bids; weather protection.
- Sec. 44H Commissioner of labor and industries; enforcement powers.
- Sec. 44J Competitive bidding required for contract for construction, reconstruction, etc., of building, road, bridge or other physical property; notice; writing requirement; penalties.
- Sec. 44M Energy system life-cycle cost estimates required in public works and contracts; penalty.

Regulations (references are to the Code of Massachusetts Regulations)

720 CMR 5.00	Department of Public Works contractor prequalification
780 CMR 100 et seq	State building code
810 CMR 4.00	Contractor certification
810 CMR 5.00	Contractor debarment
950 CMR 21.00	Central Register



APPENDIX C
STANDARD FORMS

You may make copies of any of the standard forms included in this section.

Page

<u>Central Register</u> forms	Central Register Information	C-2
	Designer Services	C-3
	General Contracts	C-4
	Persons Receiving Bidding Documents	C-5
	Contract Award	C-6
DCPO forms	Contractor Qualification Update Statement	C-7
	Contractor Evaluation Questionnaire	C-10
DSB form	Application to Designer Selection Board	C-14
Statutory forms	Form for General Bid	C-17
	Form for Sub-bid	C-19



The Commonwealth of Massachusetts

Office of the Secretary of State
Michael J. Connolly, Secretary

CENTRAL REGISTER
One Ashburton Place, Room 2A Plaza Level
Boston, MA 02108
(617)727-9136 FAX (617)742-4822

Some Questions and Answers About the Central Register

What must be advertised in the Central Register?

All contracts estimated to cost \$5,000 or more for construction, reconstruction, renovation, demolition, or the repair and maintenance of public property in the Commonwealth. This includes a wide diversity of contracts from new construction, roofing, and painting, to supplies and furnishings incident to the design of a public facility, and even snow removal. The proposal to hire the services of an architect, planner, engineer or construction supervisor must be advertised when the completed cost of a project is estimated to be over \$10,000. In addition to the invitation to bid or to submit proposals, a public authority must publish the names of firms that obtain bidding documents, and also must publish the contract award. There is no cost for advertising in the Register.

What should be submitted to the Central Register?

One original or clearly reproduced Central Register form with all relevant information typed neatly. Remember that the form the Central Register receives from you will be reproduced thousands of times for Register users around the state and therefore must be typed clearly.

When should notices appear in the Central Register?

The law requires that both the Designer Services (CR1) and the General Contracts (CR2) notices be published in the Register at least two weeks prior to the deadline for proposals or the general bid opening. The Register is published every Wednesday. The deadline for every issue is Tuesday of the preceeding week (eight days before publication). There are no exceptions to the Tuesday deadline, the Wednesday publication date, or the two week notice requirements.

How should I mail my notice to the Central Register?

Early! Missing the Tuesday deadline may require rescheduling bid opening dates and create other logistical problems. Allow at least four working days by regular mail. We suggest overnight delivery services if you are not sure the notice will arrive on time. We discourage the use of certified or registered mail which frequently delays receipt. If you require proof of delivery send an extra copy of the form with a stamped self-addressed envelope. If you have access to a telephone Facsimile machine (usually referred to as FAX), you can send the Register forms to the Secretary's FAX. The number is (617)742-4822. Do not wait until the last minute to FAX Register forms as you may not get through.

When am I required to have a pre-qualified contractor or designer?

Projects that cost over \$25,000 must use a contractor qualified by the Division of Capital Planning and Operations. When the completed cost of a project is over \$10,000 you must use a licensed architect, designer or engineer. Public works projects that cost over \$50,000 must use a contractor qualified by the Department of Public Works.

Where can I find out more about the whole process?

The Office of the Inspector General has published a guide to the contracting process called Designing and Constructing for Municipal Facilities which is available at the State Bookstore. The cost is \$3.00 (plus \$1.45 postage when ordering by mail). Checks should be made payable to the Commonwealth of Massachusetts and sent to:

State Bookstore
Room 116
State House
Boston, MA 02133

State House, Boston, MA 02133

AUTHORITY

agency, municipality or district;
contact person, address and telephone

PROJECT

PROJECT PROGRAM AVAILABLE

where and when

ESTIMATED CONSTRUCTION COST

TIME PERIOD FOR COMPLETED PROJECT

BRIEFING SESSION

where and when

SCOPE OF WORK

SPECIFIC DESIGNER SERVICES

☐ Architect

☐ Engineer

☐ Planner

☐ Space Planner

☐ Landscape Architect

☐ Land Surveyor

☐ Programmer

☐ Project Manager

DESIGNER'S FEE

☐ Set specify amount

☐ Negotiated

ADDITIONAL INFORMATION

DEADLINE FOR APPLICATION FORM

date and time

AUTHORITY

agency, municipality or district;
contact person, address and telephone

PROJECT

PROJECT PROGRAM AVAILABLE

where and when

ESTIMATED CONSTRUCTION COST

TIME PERIOD FOR COMPLETED PROJECT

BRIEFING SESSION

where and when

SCOPE OF WORK

SPECIFIC DESIGNER SERVICES

☐ Architect

☐ Engineer

☐ Planner

☐ Space Planner

☐ Landscape Architect

☐ Land Surveyor

☐ Programmer

☐ Project Manager

DESIGNER'S FEE

☐ Set specify amount

☐ Negotiated

ADDITIONAL INFORMATION

DEADLINE FOR APPLICATION FORM

date and time

CR2 **CENTRAL REGISTER - GENERAL CONTRACTS**

Public contracts that are construction related and estimated to exceed \$5,000. Published two weeks prior to general bid opening.

AUTHORITY

agency, municipality or district: contact person, address and telephone

PROJECT

PLANS/SPECIFICATIONS AVAILABLE

place, date and time

ESTIMATED COST

CONTRACTOR QUALIFICATION

required for contracts over \$25,000

Contractor Category:

DCPO certificate ☐ or

Mass D.P.W. ☐

FILED SUB BID CATEGORIES

SUB BID DEADLINE

GENERAL BID DEADLINE

date and time

ADDITIONAL INFORMATION

CR2 **CENTRAL REGISTER - GENERAL CONTRACTS**

Public contracts that are construction related and estimated to exceed \$5,000. Published two weeks prior to general bid opening.

AUTHORITY

agency, municipality or district: contact person, address and telephone

PROJECT

PLANS/SPECIFICATIONS AVAILABLE

place, date and time

ESTIMATED COST

CONTRACTOR QUALIFICATION

required for contracts over \$25,000

Contractor Category:

DCPO certificate ☐ or

Mass D.P.W. ☐

FILED SUB BID CATEGORIES

SUB BID DEADLINE

GENERAL BID DEADLINE

date and time

ADDITIONAL INFORMATION

CR5

CENTRAL REGISTER - PERSONS RECEIVING BIDDING DOCUMENTS

Weekly list of persons or firms receiving plans and specifications for public projects estimated to exceed \$5,000.

AUTHORITY

*Agency, municipality or district;
person, address and telephone*

PROJECT

R4 **CENTRAL REGISTER - CONTRACT AWARD**
l contracts published in a prior issue of the Central Register.

UTHORITY
*ency, municipality or district;
tact person, address and telephone*

PROJECT - Designer Services ☐
General Contract ☐

ONTRACT AWARDED TO
*ne and address of awardee,
additional space to include sub bids if applicable*

CONTRACT AMOUNT

4 **CENTRAL REGISTER - CONTRACT AWARD**
contracts published in a prior issue of the Central Register.

THORITY
*ncy, municipality or district;
tact person, address and telephone*

PROJECT - Designer Services ☐
General Contract ☐

ONTRACT AWARDED TO
*ne and address of awardee,
additional space to include sub bids if applicable*

CONTRACT AMOUNT

4 **CENTRAL REGISTER - CONTRACT AWARD**
contracts published in a prior issue of the Central Register.

THORITY
*ncy, municipality or district;
tact person, address and telephone*

PROJECT - Designer Services ☐
General Contract ☐

ONTRACT AWARDED TO
*ne and address of awardee,
additional space to include sub bids if applicable*

CONTRACT AMOUNT

UPDATE STATEMENT

This form is to be completely filled out and signed by the bidder and must accompany every bid on a public building project subject to M.G.L. Chapter 149, Section 44 A-J. Information is to cover the period from the date of the contractor's most recently filed Contractor Qualification Statement (CQS) to the bid date.

Requested information is referenced to sections of the CQS and is to be submitted in the same format. If additional space is needed, please attach additional sheets.

TO THE AWARDING AUTHORITY:

Information in the low bidder's update statement must be reviewed and verified to the satisfaction of the Awarding Authority before a contract is awarded. The bidder's performance on projects completed since his last certification (item 1) must be a part of the review and some references should be contacted by the Awarding Authority as part of its own investigation. If the awarding authority determines that the bidder does not demonstrably possess the skill, ability and integrity necessary to faithfully perform the work, it shall reject the bid.

An unsigned statement or furnishing false information shall cause the bid to be rejected. The Awarding Authority may, at its discretion, give the bidder notice of other defects or omissions and an opportunity to make revisions to the update statement. A contractor's bid shall not be rejected if there are mistakes or omission of form, provided the contractor promptly corrects these mistakes or omissions upon request of the Awarding Authority.

The Awarding Authority shall determine the cost to complete the remaining work of the contractor's projects currently underway (item 4). The bidder may not be awarded a contract which, when added to the cost to complete all other currently held contracts, would exceed the contractor's aggregate rating limit indicated on his Certificate of Eligibility.

CONTRACTOR'S AFFIDAVIT:

I swear under the pains and penalties of perjury that the answers and statements below, as well as those attached, are true, and that the accompanying bid is in all respects bona fide, fair and made without collusion or fraud with any other person.

Bid Date

Print Name of Bidder

Project Number

Business Address

Awarding Authority

Telephone Number

Signature of Bidder



UPDATE STATEMENT: CONTRACTOR QUESTIONNAIRE

1. List all construction projects your firm has completed since the date of your most recent Contractor Qualification Statement. (See Item 4.6 of the CQS.)

PROJECT TITLE	LOCATION	CATEGORY	CONTRACT AMOUNT	START/END DATES

2. List all information concerning references from each project listed in item 1, above.

PROJECT TITLE	COMPANY NAME	CONTACT PERSON	AREA CODE	TELEPHONE NUMBER
OWNER				
DESIGNER				
GC				
OWNER				
DESIGNER				
GC				

3. List all construction projects your firm has in process on this date.

PROJECT LOCATION	CATEGORY	CONTRACT AMOUNT	% COMPLETE	START/END DATES	ON SCHEDULE?

4. List the total cost to complete the projects listed in item 3, above: \$ _____



5. List all information concerning references from each project listed in item 3, above.

PROJECT TITLE	COMPANY NAME	CONTACT PERSON	AREA CODE	TELEPHONE NUMBER
	OWNER			
	DESIGNER			
	GC			
	OWNER			
	DESIGNER			
	GC			

6. List each project which your firm has failed to complete since the date of your most recent Contractor Qualification Statement, and describe the circumstances leading to the project failure. (See Item 4.12 of the CQS.)

PROJECT TITLE	CONTRACT AMOUNT	START DATE	CIRCUMSTANCES

7. List the names of all supervisory personnel, such as project managers and superintendents, who will be assigned to the project if your organization is determined to be the low bidder. Attach resumes of these personnel.

NAME	TITLE OR FUNCTION

8. Describe in detail any significant changes to your firm's business organization, financial condition, or bonding references that have taken place since the date of your Contractor Qualification Statement. (See Parts II and V of the CQS.)

9. Describe all legal or administrative proceedings which are currently pending against your firm or a principal of your firm, or which have been concluded adversely to your firm or a principal of your firm, since the date of your Contractor Qualification Statement, and which relate to procurement or performance of any public or private construction contracts, and any criminal law proceedings relating to embezzlement, theft, forgery, bribery, falsification or destruction of records or receipt of stolen property. Include a description by docket number, court or agency; names of parties; and the basis of the legal or administrative proceeding.

DCPO CONTRACTOR CERTIFICATION EVALUATION QUESTIONNAIRE

Reference Name :		Contractor :	
Position/Title :		Evaluator :	
Agency or Firm :		Date :	
Telephone :			
Project Description :			
Project Location . :			
Contract Cost :		Start/End Dates :	
Type of Contract : BID NEG. OTHER (specify)		U/O Date :	

1. Finished Product Quality

Was the building or project completed in all respects in accordance with the contract plans, specifications and requirements? Was it necessary to modify, repair or correct any deficiencies? Explain, citing examples and indicate if deficiencies were of a significant nature.

2. Performance and Accountability

(a) Did applicant meet client cost goals? Did applicant unreasonably cause or claim for change orders? Did applicant request reasonable charges on change orders?

(b) Did the contractor meet the contract schedules? If not, was the delay attributable to the contractor? If it was attributable to the contractor, explain the circumstances.



(c) Were the contractor's construction procedures satisfactory—that is, was the contractor knowledgeable and competent in approaching and carrying out the work called for in the plans and specifications? If not, give specific examples of unsatisfactory construction procedures. Do you consider the problems that resulted to be minor or major? Why?

(d) Did the subcontractor's work proceed smoothly, according to plans and specifications? (If no subcontractors were used, evaluate the overall project management. Was contractor able to resolve problems effectively?

(e) Were the contractor's working relationships with other parties—including the owner/user agency, the designer, the project manager and the subcontractors—satisfactory? If not, cite examples of problems and how these problems were resolved.

(f) Did the contractor submit the required paperwork promptly and in proper form? If not, give specific examples of problems.

3. Project Supervision

(a) Did the supervisor(s) or project manager(s) perform satisfactorily—that is, did this person (these people) demonstrate construction experience, knowledge and management skills? If not, in what way was this person's performance unsatisfactory? Do you consider the problems that resulted to be minor or major? Why? (Note to evaluator: Obtain performance evaluations for each supervisor or project manager on the project.)

4. Were there legal proceedings, invoked bonds, or assessed penalties or damages on this contract? If yes, what were the circumstances leading to the legal proceedings, invoked bonds, or assessment of penalties or damages? What is the status of any pending litigation? What are the dollar amounts of the penalties or damages?

**DCPO CONTRACTOR CERTIFICATION
RATING SUMMARY SHEET**

Reference Name :		Contractor :			
Position/Title :		Evaluator :			
Agency or Firm :		Date :			
Telephone :		Project :			
	Unsat.	Below Average	Average	Above Average	
1. Finished Product Quality	0	10	20	30	
2. Performance and Accountability					
(a) Cost Containment	0	5	10	14	
(b) Scheduling	0	5	10	14	
(c) Construction Procedures	0	3	7	9	
(d) Management of Subcontractors (or project)	0	3	7	9	
(e) Working Relationships	0	2	4	6	
(f) Paperwork Processing	0	2	4	6	
	Subtotal				
3. Supervisory Personnel Rating					
(a) Quality of Supervision	0	2	4	6	
(b) General Training/Experience	0	2	4	6	
	Subtotal				
TOTAL Contractor Rating					
Evaluator Comments :					
Supervisor Comments :					



APPLICATION to DESIGNER SELECTION BOARD

PLEASE SUBMIT 12 COPIES OF THIS FORM (IT MAY BE REPRODUCED) WITH A MAXIMUM OF TWO 8½" x 11" SUPPLEMENTARY SHEETS.

1. DSB LIST NO.: ITEM NO.: MASS. STATE PROJECT NO.:

TITLE:

LOCATION:

2. NAME OF FIRM:
(or Joint Venture)TYPE OF ORGANIZATION:
(Proprietorship, Partnership, Corporation, etc.)

ADDRESS:

YEAR ESTABLISHED:

FEDERAL I.D. NO.:

LOCATION OF PRINCIPAL OFFICE IF OUT OF STATE:

Check here if your firm is a SOMBA certified minority (MBE) ☐ or SOMBA women-owned business enterprise (WBE) ☐.

3. NAME AND TITLE OF PRINCIPAL TO CONTACT:

PHONE NUMBER: ()

4a. KEY PERSONS, SPECIALISTS AND INDIVIDUALS IN YOUR FIRM TO BE ASSIGNED TO THIS PROJECT:

NAME AND TITLE	MASS. REG. NO.	(Architectural, Structural, Mechanical, Electrical, etc.) DISCIPLINE/PROJECT ROLE

4b. KEY PERSONS, SPECIALISTS AND INDIVIDUALS IN CONSULTANT FIRMS TO BE ASSIGNED TO THIS PROJECT:

NAME OF PERSON/FIRM NAME/ADDRESS	MASS. REG. NO.	DISCIPLINE/PROJECT ROLE

5. FULL TIME PERSONNEL IN YOUR FIRM'S MASSACHUSETTS OFFICE BY DISCIPLINE: (Average number employed throughout the preceding 6 month period. Indicate both the total number in each discipline and, within brackets, the total number holding Massachusetts registrations.)

Administrative	Fire Protection Engineering	Soils Engineering
Architectural	H.V.A.C. Engineering	Specification Writers
Acoustical Engineering	Interior Designing	Structural Engineering
Civil Engineering	Landscape Architects	Surveyors
Ecologists	Life Safety Code	Transportation Engineering
Electrical Engineering	Mechanical Engineering	Draftsmen
Energy Specialists	Planners	Other:
Environmental Engineering	Sanitary Engineering	TOTAL PERSONNEL



APPLICATION to DESIGNER SELECTION BOARD

PLEASE SUBMIT 12 COPIES OF THIS FORM (IT MAY BE REPRODUCED) WITH A MAXIMUM OF TWO 8½" x 11" SUPPLEMENTARY SHEETS.

1. DSB LIST NO.:	ITEM NO.:	MASS. STATE PROJECT NO.:
TITLE:		
LOCATION:		

2. NAME OF FIRM: (or Joint Venture)	TYPE OF ORGANIZATION: (Proprietorship, Partnership, Corporation, etc.)
ADDRESS:	YEAR ESTABLISHED:
	FEDERAL I.D. NO.:

LOCATION OF PRINCIPAL OFFICE IF OUT OF STATE:

Check here if your firm is a SOMBA certified minority (MBE) ☐ or SOMBA women-owned business enterprise (WBE) ☐.

3. NAME AND TITLE OF PRINCIPAL TO CONTACT:	PHONE NUMBER: ()
--	-----------------------

4a. KEY PERSONS, SPECIALISTS AND INDIVIDUALS IN YOUR FIRM TO BE ASSIGNED TO THIS PROJECT:

NAME AND TITLE	MASS. REG. NO.	(Architectural, Structural, Mechanical, Electrical, etc.) DISCIPLINE/PROJECT ROLE

4b. KEY PERSONS, SPECIALISTS AND INDIVIDUALS IN CONSULTANT FIRMS TO BE ASSIGNED TO THIS PROJECT:

NAME OF PERSON/FIRM NAME/ADDRESS	MASS. REG. NO.	DISCIPLINE/PROJECT ROLE

5. FULL TIME PERSONNEL IN YOUR FIRM'S MASSACHUSETTS OFFICE BY DISCIPLINE: (Average number employed throughout the preceding 6 month period. Indicate both the total number in each discipline and, within brackets, the total number holding Massachusetts registrations.)

Administrative (.....)	Fire Protection Engineering (.....)	Soils Engineering (.....)
Architectural (.....)	H.V.A.C. Engineering (.....)	Specification Writers (.....)
Acoustical Engineering (.....)	Interior Designing (.....)	Structural Engineering (.....)
Civil Engineering (.....)	Landscape Architects (.....)	Surveyors (.....)
Ecologists (.....)	Life Safety Code (.....)	Transportation Engineering (.....)
Electrical Engineering (.....)	Mechanical Engineering (.....)	Draftsmen (.....)
Energy Specialists (.....)	Planners (.....)	Other: (.....)
Environmental Engineering (.....)	Sanitary Engineering (.....)	TOTAL PERSONNEL (.....)



PROJECT NAME, LOCATION & DESCRIPTION

PROJECT COST
OR STUDY FEEYEAR
COMP.

PHASES*

REFERENCES
NAME AND PHONE

7a. ADDITIONAL INFORMATION OR DESCRIPTION OF RESOURCES SUPPORTING YOUR FIRM'S QUALIFICATIONS FOR THIS PROJECT: (If joint venture, indicate previous experience with this joint venture.)

7b. ESTIMATED TIME FOR YOUR FIRM TO PERFORM SCOPE OF SERVICES AS PUBLICLY ADVERTISED.

8. PRINCIPAL BUSINESS OF THIS FIRM AND PRINCIPAL SPECIALIZATIONS:

9. PROFESSIONAL LIABILITY INSURANCE:

NAME OF COMPANY

AGGREGATE AMOUNT

POLICY NUMBER

EXPIRATION DATE

C-15



[illegible][illegible]

12. I hereby certify that this firm is a "Designer", as that term is defined in Chapter 7, Section 38A½ of the General Laws, unless the design services required are limited to the preparation of studies, surveys, soil testing, cost estimates or programs. The foregoing is a statement of facts, sworn to by the undersigned under the penalties for perjury.

DATE _____

IF ADDITIONAL SPACE IS NECESSARY, PLEASE ATTACH NO MORE THAN 2 ADDITIONAL 8½ x 11 SHEETS.



FORM FOR GENERAL BID

To the Awarding Authority:

A. The Undersigned proposes to furnish all labor and materials required for (project) in (city or town), Massachusetts, in accordance with the accompanying plans and specifications prepared by (name of architect or engineer) for the contract price specified below, subject to additions and deductions according to the terms of the specifications.

B. This bid includes addenda numbered _____.

C. The proposed contract price is _____ dollars
(\$_____).

For alternate No. _____ Add \$ _____; Subtract \$ _____
(Repeat preceding line for each alternate)

D. The subdivision of the proposed contract price is as follows:

Item 1. The work of the general contractor, being all work other than that covered by Item 2. \$_____.

Item 2. Sub-bids as follows:-

Sub-trade	Name of Sub-bidder	Amount	Bond required, indicated by "Yes" or "No"
_____	_____	\$ _____	_____
_____	_____	\$ _____	_____
Total of Item 2		\$ _____	

The undersigned agrees that each of the above named sub-bidders will be used for the work indicated at the amount stated, unless a substitution is made. The undersigned further agrees to pay the premiums for the performance and payment bonds furnished by sub-bidders as requested herein and that all of the cost of all such premiums is included in the amount set forth in Item 1 of this bid.

The undersigned agrees that if he is selected as general contractor, he will promptly confer with the awarding authority on the question of sub-bidders; and that the awarding authority may substitute for any sub-bid listed above a sub-bid filed with the awarding authority by another sub-bidder for the sub-trade against whose standing and ability the undersigned makes no objection; and that the undersigned will use all such finally selected sub-bidders at the amounts named in their respective sub-bids and be in every way as responsible for them and their work as if they had been originally named in this general bid, the total contract price being adjusted to conform thereto.



FORM FOR GENERAL BID -- p.2

E. The undersigned agrees that, if he is selected as general contractor, he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the awarding authority, execute a contract in accordance with the terms of this bid and furnish a performance bond and also a labor and materials or payment bond, each of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority and each in the sum of the contract price, the premiums for which are to be paid by the general contractor and are included in the contract price.

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that he will comply fully with all laws and regulations applicable to awards made subject to section forty-four A.

The undersigned hereby certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

Date_____

(Name of General Bidder)

By _____
(Name of Person Signing Bid and Title)

(Business Address)

(City and State)



FORM FOR SUB-BID

To all General Bidders Except those Excluded:

A. The Undersigned proposes to furnish all labor and materials required for completing, in accordance with the hereinafter described plans, specifications and addenda, all the work specified in Section No. _____ of the specifications and in any plans specified in such section, prepared by (name of architect or engineer) for (project) in (city or town), Massachusetts, for the contract sum of _____ dollars (\$_____).

For Alternate No. _____; Add \$_____ Subtract \$_____
[Repeat preceding line for each alternate]

B. This sub-bid includes addenda numbered _____.

C. This sub-bid

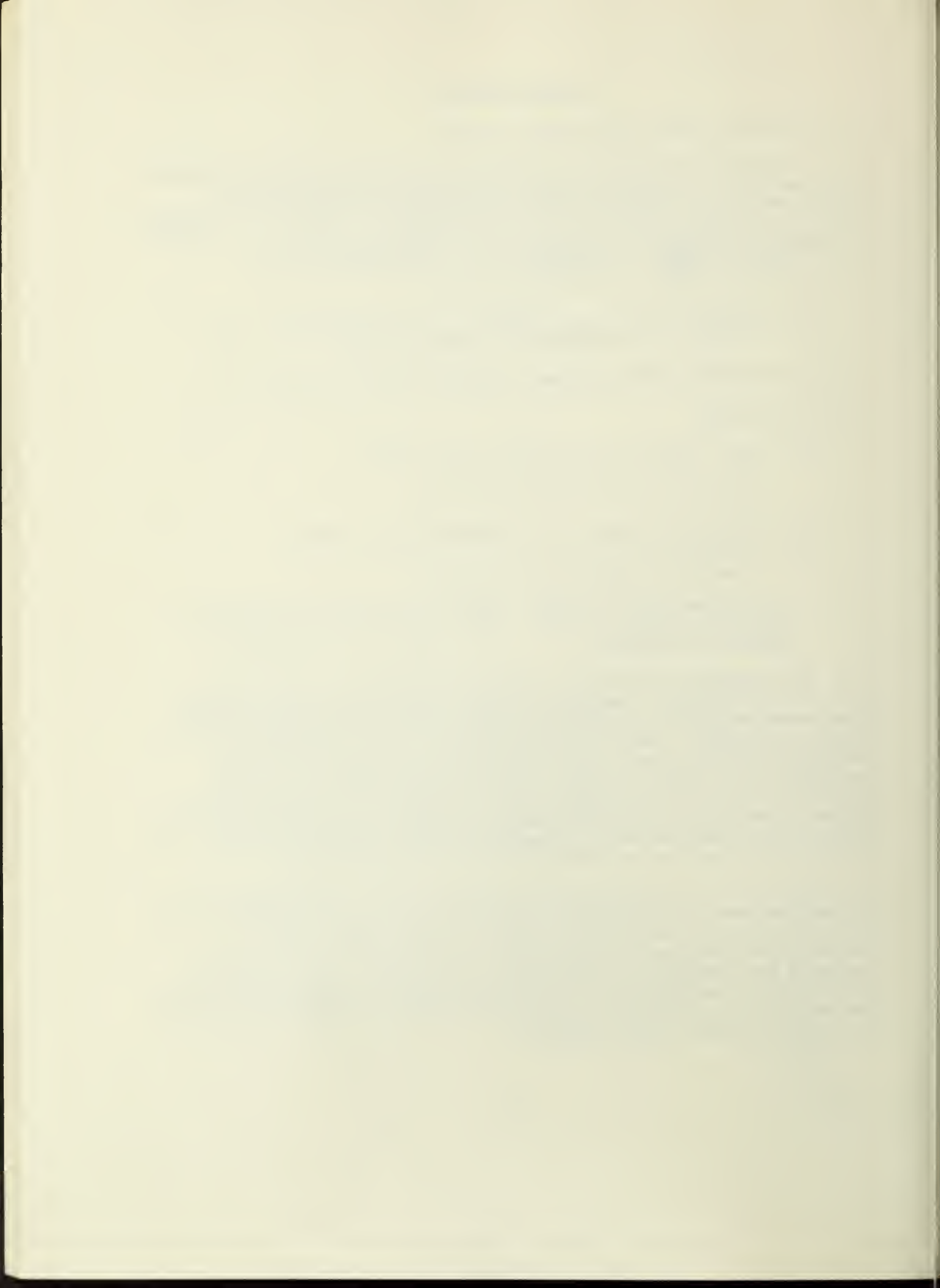
☐ may be used by any general bidder except:

☐ may only be used by the following general bidders:

[To exclude general bidders, insert "X" in one box only and fill in blank following that box. Do not answer C if no general bidders are excluded.]

D. The undersigned agrees that, if he is selected as a sub-bidder, he will, within five days, Saturdays, Sundays and legal holidays excluded, after presentation of a subcontract by the general bidder selected as the general contractor, execute with such general bidder a subcontract in accordance with the terms of this sub-bid, and contingent upon the execution of the general contract, and, if requested so to do in the general bid by such general bidder, who shall pay the premiums therefor, furnish a performance and payment bond of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority, in the full sum of the subcontract price.

E. The names of all persons, firms and corporations furnishing to the undersigned labor or labor and materials for the class or classes or part thereof of work for which the provisions of the section of the specifications for this sub-trade require a listing in this paragraph, including the undersigned if customarily furnished by persons on his own payroll and in the absence of a contrary provisions in the specifications, the name of each such class of work or part thereto and the bid price for such class of work or part thereof are:



FORM FOR SUB-BID -- p 2

Name	Class of Work	Bid price
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[Do not give bid price for any class or part thereof furnished by undersigned.]

F. The undersigned agrees that the above list of bids to the undersigned represents bona fide bids based on the hereinbefore described plans, specifications and addenda and that, if the undersigned is awarded the contract, they will be used for the work indicated at the amounts stated, if satisfactory to the awarding authority.

G. The undersigned further agrees to be bound to the general contractor by the terms of the hereinbefore described plans, specifications, including all general conditions stated therein, and addenda, and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the owner.

H. The undersigned offers the following information as evidence of his qualifications to perform the work as bid upon according to all the requirements of the plans and specifications:-

1. Have been in business under present business name _____ years.
2. Ever failed to complete any work awarded? _____
3. List one or more recent buildings with names of the general contractor and architect on which you served as a subcontractor for work of similar character as required for the above-named building.

	Building	Architect	General Contractor	Amount of Contract
(a)	_____	_____	_____	_____
(b)	_____	_____	_____	_____
(c)	_____	_____	_____	_____

4. Bank reference _____



I. The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that he will comply fully with all laws and regulations applicable to awards of subcontracts subject to section forty-four F.

The undersigned further certifies under penalties of perjury that this sub-bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

Date _____

(Name of Sub-bidder)

By _____
(Title and Name of Person Signing Bid)

(Business Address)

(City and State)



APPENDIX D
DESIGNER SELECTION BOARD GUIDELINES

The guidelines on the following pages have been issued by the Designer Selection Board to assist municipalities in preparing their own designer selection procedures. See chapter 2 of this manual for additional information on preparing designer selection procedures.





The Commonwealth of Massachusetts

Executive Office for Administration and Finance

Designer Selection Board

One Ashburton Place

Boston, Massachusetts 02108

617-727-4046

MICHAEL S. DUKAKIS
GOVERNOR

ARTHUR C. S. CHOO
CHAIRMAN

GEORGE R. BEATON
EXECUTIVE DIRECTOR

NOTE: FOR EASE OF COMPARISON, CHANGES IN THE
GUIDELINES ISSUED ON 2/7/85 ARE OUTLINED

TO: Cities and Towns

FROM: George R. Beaton, Executive Director
Designer Selection Board

DATE: November 19, 1985

RE: Designer Selection Guidelines - Cities and Towns

Several
~~Two~~ legislative acts recently passed revise the law concerning selection of
designers on public building projects.

Section 5 of Chapter 189 of the Acts of 1984 made various technical
corrections to the public designer selection procedures. More importantly,
Section 5 re-numbered the sections of the designer selection law, as follows:

G.L. Chapter 7, section 30B	became	section 38A ¹
section 30C	"	section 38B
section 30D	"	section 38C
section 30E	"	section 38D
section 30F	"	section 38E
section 30G	"	section 38F
section 30H	"	section 38G
section 30I	"	section 38H
section 30J	"	section 38I
section 30K	"	section 38J
section 30L	"	section 38K
section 30M	"	section 38L
section 30N	"	section 38M
section 30O	"	section 38N
section 30P	"	section 38O

On January 7, 1985 the Governor signed Chapter 484 of the Acts of 1984 into
law. The designer selection provisions of Chapter 484 are effective on April 7,
1985. The Division of Capital Planning and Operations has prepared a summary of
Chapter 484 for public agencies. That summary appeared in Volume 5, Issue 5 of
the Central Register and is available from DCPO upon request.

On August 1, 1985, the Governor signed Chapter 228 of the Acts of 1985 into law,
retroactive to April 7, 1985. This act revised the maximum amount of professional
liability insurance coverage required by designers and revised the indemnity obli-
gations of subcontractors to third parties.

Chapter 484 made several significant revisions to the designer selection procedures applicable to cities and towns. The Designer Selection Board adopted the attached Guidelines for Cities and Towns on January 22, 1985, to be effective on April 7, 1985. The Guidelines are intended to bring local designer selection procedures into conformance with the new statutory revisions. They replace the guidelines originally approved by the Board on June 10, 1982.

The designer selection procedure that each city and town adopts must comply with the purposes and intent of the State Designer Selection Board law, Chapter 7, section 38A $\frac{1}{2}$ -38 O. It must be open to public scrutiny. It should encourage architects and engineers to compete for public work. At a minimum, it must contain the following four specific provisions:

- Newspaper and central register advertising;
- Uniform application form and evaluation procedure;
- Public written explanation of reasons for selection; and
- Lump sum fees.

It should also be noted that Section 38L requires public agencies to keep the following records:

- all information supplied by or obtained about each applicant;
- all actions taken by the board or agency relating to any project;
- any other records related to designer selection required by the division.

The Inspector General's Office has recently requested the Board to assist him in his endeavors to ascertain compliance with these statutory requirements and cities and towns should be aware that the Board and the Inspector General intend to verify that cities and towns are complying with the law.

On building projects, designers are required to carry professional liability insurance. Liability insurance is not required for the preparation of studies, surveys, soil testing, cost estimates, or programs. A copy of the DCPO Standard Design Contract is available at the Division of Capital Planning and Operations Headquarters, 15th Floor, One Ashburton Place, Boston, MA 02108. You may use it or modify it in any way you find helpful.

Our purpose is to help municipalities establish a professional and objective procedure which will carry out the purposes of the designer selection statute, and secure the highest quality design services for all public building projects. Municipalities may also wish to utilize the services of the Designer Selection Board as provided by the following statute.

Massachusetts General Law Chapter 7, section 38K(c) provides that:

"Any city, town or other public agency not otherwise subject to the jurisdiction of the board may request the board to exercise jurisdiction regarding the selection of applicants to perform design services for a specified period of time or for a specified project. In such cases, all provisions of sections thirty-eight A $\frac{1}{2}$ to thirty-eight O, inclusive, shall apply to the board, the applicants and the public agency so requesting."

Although this Board has a heavy workload of projects, we will process major design projects for cities and towns upon request.

There are several significant revisions made in Chapter 484, that will partially alleviate the obligations of cities and towns to follow detailed designer selection procedures.

First, for those projects without an associated estimated construction cost, including but not limited to feasibility studies, projects shall be exempt from these procedures if the cost of the design service is less than two thousand five hundred dollars.

Second public works projects which are bid under Chapter 30, section 39M are still exempt from the designer selection statute as are all projects involving the design of sewer, highway and water systems (see G.L. Chapter 7, section 39A(g)).

Third, on repair projects where the total design fee is \$25,000 or less, there is no longer a requirement to separate the study designer from the designer responsible for preparing the plans and specifications (see G.L. Chapter 7, section 38H(d)).

Fourth,

Finally, cities and towns may continue a study/program designer into the design development stage of a project provided an independent study has been commissioned to verify that the original program is feasible and adequate (see G.L. Chapter 7, section 38H(i)).

I hope this information and the attached Guidelines will assist your city or town in complying with the new statutory procedures for designer selection.

In addition to revising the attached "Guidelines for Local Designer Selection Procedures" to include provisions recently enacted by the Legislature, we have included "Regulation 811 CMR 3.00 Expedited Procedure for Selection of Designers when an Emergency Situation Exists." This regulation was specifically adopted for emergency projects encountered by the Division of Capital Planning and Operations. However, local awarding authorities may find it desirable to adopt similar emergency designer selection procedures after proper substitution of respective local officials in lieu of state officials.

Also attached for your convenience is a suggested standard application form that cities and towns may utilize as the required uniform application form.

DEFINITIONS

"Designer", an individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of architecture, landscape architecture, or engineering, which satisfies the following:

- i. if an individual, the individual is a registered architect, landscape architect, or engineer;
- ii. if a partnership, a majority of all the partners are persons who are registered architects, landscape architects, or engineers;
- iii. if a corporation, sole proprietorship, joint stock company or other entity, the majority of the directors or a majority of the stock ownership and the chief executive officer are persons who are registered architects, landscape architects, or engineers, and the person to have the project in his or her charge is registered in the discipline for the project.
- iv. if a joint venture, each joint venturer satisfies the requirements of this section.

"Designer services" means any of the following services provided by any designer, programmer, or construction manager in connection with any public building project:

- i. preparation of master plans, studies, surveys, soil tests, cost estimates or programs;
- ii. preparation of drawings, plans or specifications including but not limited to schematic drawings, preliminary plans and specifications, working plans and specifications or other administration of construction contracts documents;
- iii. supervision or administration of a construction contract; and
- iv. construction management or scheduling.

"Building project", a capital facility project undertaken for the planning, acquisition, design, construction, demolition, installation, repair or maintenance of any building and appurtenant structures, facilities and utilities, including initial equipment and furnishings thereof; provided, however, that appurtenant buildings or structures which are required to be constructed as integral parts of the development of sewer, water, and highway systems shall not be subject to section 38C, (selection of designers in accordance with the attached guidelines).

"Committee", appointees of the Local Awarding Authority to act as a designer selection board for selection of finalists to provide design services for city or town building projects in accordance with the intent of Chapter 7, sections 38A½ to 38 O.

GUIDELINES FOR LOCAL DESIGNER SELECTION PROCEDURES

*See Definitions

The Designer Selection Board is authorized, under the provisions of G.L. Chapter 7, section 38K, to develop guidelines for the designer selection procedures to be adopted by cities and towns throughout the Commonwealth. The procedure is to apply to the selection of designers on building construction, renovation, alteration, remodeling and repair projects, the estimated cost of which exceeds ten thousand dollars. For those projects without an associated estimated construction cost, including but not limited to feasibility studies, projects are exempt from these procedures if the cost of the design service is less than two thousand five hundred dollars. These procedures do not apply to the selection of designers for public works projects bid under provisions of Chapter 30, section 39M and projects that are integral parts of the development of sewer, water and highway systems. See the definition of "building project"* if there is a question whether a particular project is a building project subject to these guidelines.

The Designer Selection Board recommends the following procedures:

1. The awarding authority that will award and administer the design contract will determine the nature and extent of the design services* required for the project and will develop the project criteria required under #3 below.
2. A request for proposals (RFP) for each contract for designer services for a project subject to the jurisdiction of the committee* shall be publicly advertised by the committee in a newspaper of general circulation in the area in which the project is located or to be located, and in the central register established under Chapter 9, section 20A, and in such places as the committee requires at least two weeks before the deadline for filing applications. A contract for designer services for a project whose estimated cost of construction is between ten thousand and twenty-five thousand dollars need only to be advertised in the central register.
3. The RFP will provide the following detailed information:
 - a) a description of the project, the specific designer services sought, estimated construction cost, and the time allotted for completion;
 - b) when and where the program prepared for the project will be available for inspection by applicants, or a statement that there is no program beyond the information in (a) above;
 - c) the qualifications required of applicants for the project;
 - d) the categories of designers' consultants, if any, for which applicants must list consultants they intend to use;

- e) whether the fee has been set or will be negotiated. If the fee has been set, its amount must be stated in the RFP as a total dollar amount, not a percentage. If the fee is to be negotiated, the awarding authority shall establish a not-to-exceed amount prior to negotiations, but need not publish it in the RFP.
 - f) the deadline for submission of proposals;
 - g) the person and address to which proposals should be sent;
 - h) any other pertinent information.
4. A committee will be appointed by the awarding authority to evaluate proposals and select the finalists. The committee should include one or more public members; and professional members (architects and engineers) who may be in-house or outside people.
5. The selection of the finalists will be based on the following criteria:
- a) prior similar experience;
 - b) past performance on public and private projects;
 - c) financial stability;
 - d) identity and qualifications of the consultants who will work with the applicant on the project; and
 - e) any other criteria that the committee considers relevant for the project.
6. Applicants or finalists may be required to:
- a) appear for an interview before the committee;
 - b) present a written proposal to the committee; or
 - c) participate in a design competition held by the committee.
7. When the committee has required that applicants list consultants which they intend to use, any changes in, or addition to, consultants named in the application must be approved by the awarding authority and reported to the committee with a written statement by the designer or construction manager of the reasons for the change. No person or firm debarred pursuant to Chapter 149, section 44C or disqualified pursuant to Chapter 7, section 38D shall be so included as a finalist.
8. The committee will select at least three finalists from among all applicants and transmit the list to the awarding authority. The list will rank the finalists in order of qualification, provide a record of the final vote of the committee on the selection, and include a written statement explaining the committee's reasons for its choice and its ranking of the finalists. The list will be a public record.

The committee shall transmit to the awarding authority all material made or received relating to such recommendation.

9. If the fee for design services has been set by the awarding authority prior to the selection process, the awarding authority will select the designer to be awarded the contract from the list submitted by the committee. If a designer other than the one ranked first is selected, the awarding authority shall file a written justification with the committee.

If the fee is to be negotiated, the awarding authority shall review the list transmitted by the committee, and may exclude any designer from the list with a written explanation of the exclusion. The awarding authority shall then appoint a designer based on successful fee negotiation among the remaining finalists in order of rank.

10. The design contract shall state the fee as a total dollar amount. The contract may provide for equitable adjustments in the event of changes in scope of services.
11. A designer or programmer appointed to do a feasibility study, master plan or program for a project shall be ineligible for appointment to perform the design services for that project. This paragraph shall not apply to designers performing studies for repair work; provided, first, that such work is limited to identifying and correcting existing deficiencies in a portion of a building or its equipment; and second, that the designer's fee for the combined study and design of repairs is not greater than twenty-five thousand dollars.

Awarding authorities in cities and towns may allow a designer who conducted a feasibility study to continue with the design of a project, if the authority commission(s) an independent review, by a knowledgeable and competent individual or business doing such work, of the feasibility designer's work to insure its reasonableness and its adequacy prior to allowing the designer to continue on said project. The review of a state agency with oversight or approval of a project may be sufficient for the purposes of this paragraph.

12. Every contract awarded for design services shall include:

- a) certification that the designer or construction manager has not given, offered, or agreed to give any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the contract for design services;
- b) certification that no consultant to, or subcontractor for the designer or construction manager has given, offered or agreed to give any gift, contribution or offer of employment to the designer or construction manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the designer or construction manager;

c) certification that no person, corporation or other entity, other than a bona fide full-time employee of the designer or construction manager, has been retained or hired to solicit for or in any way assist the designer or construction manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the contract to the designer; and

d) certification with respect to contracts which exceed ten thousand dollars or which are for the design of a building for which the budgeted or estimated construction costs exceed one hundred thousand dollars, that the designer has internal accounting controls as required by Chapter 30, section 39K, and that the designer will:

(1) maintain accurate and detailed accounts for a six year period after the final payment;

(2) file regular statements of management concerning internal auditing controls;

(3) file an annual audited financial statement; and

(4) submit a statement from an independent certified public accountant that such CPA (or public accountant) has examined management's internal auditing controls and expresses an opinion as to their consistency with management's statements in (2) above and whether such statements are reasonable with respect to transactions and assets that are substantial in relation to designer's financial statements, Chapter 7, section 38H(e).

e) a requirement that the designer at his/her own expense obtain and maintain a professional liability insurance policy covering negligent errors, omissions and acts of the designer or of any person or business entity for whose performance the designer is legally liable arising out of the performance of such contracts for design services. The awarding authority may require a consultant employed by a designer subject to this subparagraph to obtain and maintain a similar liability insurance policy. The designer shall

furnish a certificate or certificates of such insurance coverage to the public agency prior to the award of the contract, showing coverage in an adequate amount for the applicable period of limitations and including any added coverage in such amounts as the awarding authority requires. A professional liability insurance policy obtained and maintained pursuant to this paragraph shall provide for coverage of not less than ten percent of the project's estimated cost of construction for the applicable period of limitations and include any added coverage and in such amounts as the public agency shall require. The total amount of such insurance

shall at a minimum equal the lesser of one million dollars or ten percent of the project's estimated cost of construction, or such larger amounts as the public agency may require, and shall cover the applicable period of limitations. A designer required by the public agency to obtain all or a portion of such insurance coverage at his own expense shall furnish a certificate or certificates of insurance coverage to the public agency prior to the award of the contract. For the purpose of this paragraph only, "public agency" shall have the meaning set forth in section thirty-nine A. (Revised in accordance with C228 of the Acts of 1985)

The awarding authority may request a copy of the Division of Capital Planning and Operations' Standard Design Contract to use as is, or to modify. Contracts for design services may include a requirement that the designer be responsible for overseeing the construction phase of the project.

13. In the selection of applicants to perform design services the following records will be kept by the awarding authority:

- a) all information supplied by or obtained about each applicant;
- b) all actions taken by the committee relating to any project;
- c) all actions taken by the awarding authority relating to any project.

These records will be available for inspection by the State Designer Selection Board and other authorized public agencies.

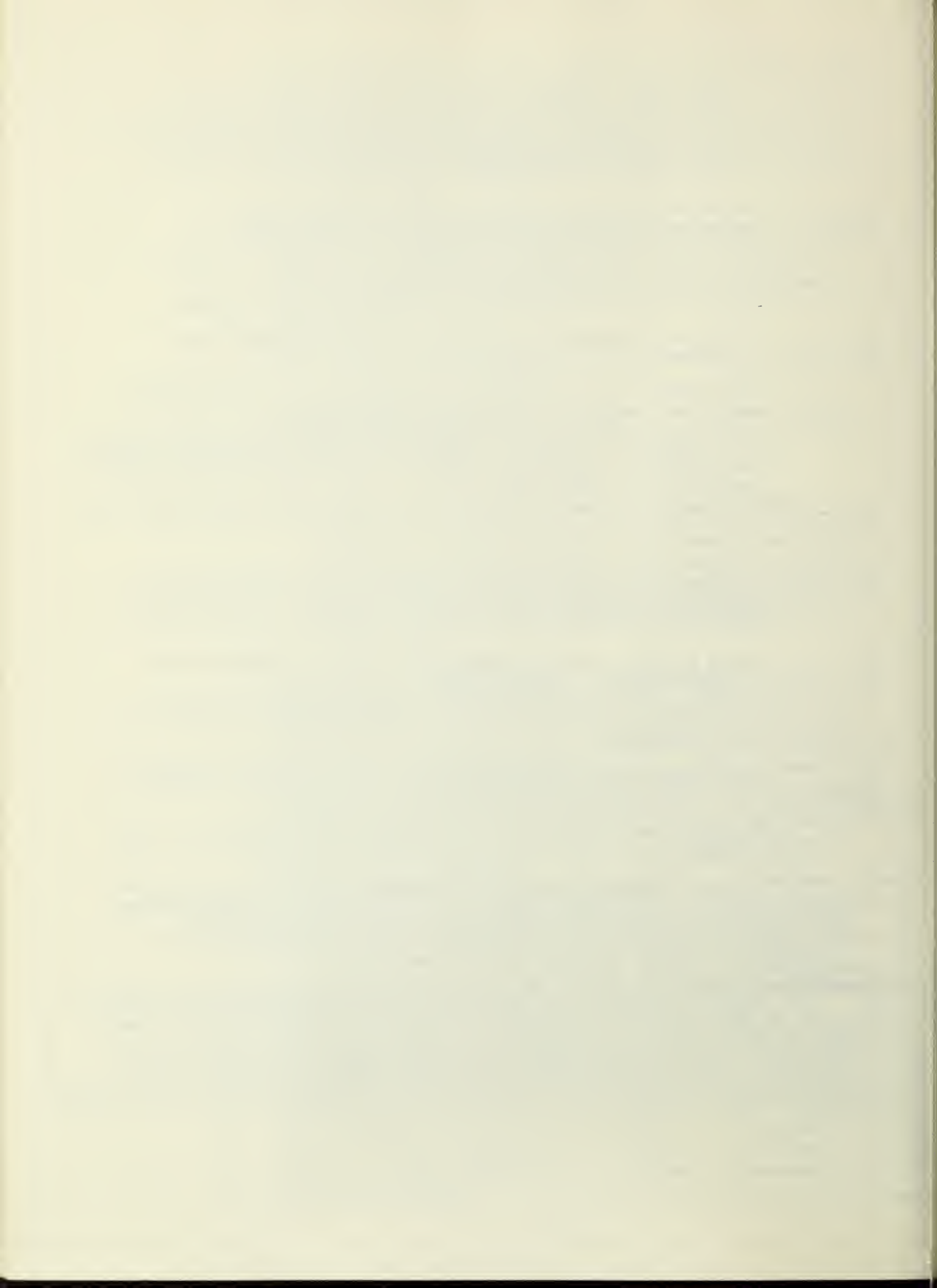
All meetings of a government body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by G.L. 30H, Section 11A½.

14. No member of the Committee shall participate in the selection of a designer as a finalist for any project if the member or any member of his or her immediate family:

- a) has a direct or indirect financial interest in the award of the design contract to any applicant;
- b) is currently employed by, or is a consultant to or under contract to an applicant;
- c) is negotiating or has an arrangement concerning future employment or contracting with any applicant; or
- d) has an ownership interest in, or is an officer or director of, any applicant.

The recommended procedures above may be amended or modified so long as the procedures adopted satisfy the purpose and intent of Chapter 7, section 38A½ to 38 O, and requires newspaper and central register advertising, a uniform application form, uniform evaluation procedure, public written explanation of the reasons for designer selection, and lump sum fees.

15. When an emergency situation exists. Cities and Towns may utilize "Regulation 811 CMR 3.00 Expedited Procedure for Selection of Designers When an Emergency Situation Exists", as adapted to local requirements including the substitution of the terms "Designer Selection Board" and "Deputy Commissioner of DCPO" with "City or Town Selection Committee" and "Local Awarding Authority" respectively.



811 CMR 3:00 EXPEDITED PROCEDURE FOR SELECTION OF DESIGNERS
WHEN AN EMERGENCY SITUATION EXISTS

Section

3.01 Scope and Purpose

3.02 Definitions

3.03 Declaration of Emergency

3.04 Studies, Programs and Design and Administration of Construction Projects

3.05 Voting by DSB Members for Selection in an Emergency Situation

3.01: Scope and Purpose

These regulations establish a speedy procedure by which the Designer Selection Board can select a designer, programmer or construction manager, when an emergency situation exists.

3.02: Definitions

As used in 811 CMR 3:00 the following terms shall have the meanings set forth, unless otherwise prescribed by statute:

Board or DSB - the State Designer Selection Board

Deputy Commissioner - the Deputy Commissioner of the Division of Capital Planning and Operations

3.03: Declaration of Emergency

(1) The declaration will be made by the Deputy Commissioner, based upon one of the following criteria.

- (a) Danger to health or safety of any persons because of the time required for selection of a designer by the regular statutory process.
- (b) Deadline for action on a project set by a court or federal agency which cannot be met if the regular statutory process is followed.
- (2) The Deputy Commissioner will file a memorandum with the Board, stating the reasons for the emergency declaration, listing proposed scope of work, estimated cost of construction, the established lump sum fee for designers' services, and any other relevant information.
- (3) Upon receipt of the memorandum from the Deputy Commissioner, the Board may elect to follow the expedited procedures set forth in the following sections.

3.04: Studies, Programs and Design and Administration of Construction Projects

- (1) If the scope of work involves a study or program, finalists may be selected from the existing standing list of consultants who have previously applied to the Board for projects of this nature as advertised in Public Notices as Item 2, or from applicants who have filed a master file brochure with the Board, without public advertising.
- (2) If the scope of work involves design and administration of a construction project, finalists may be selected from the existing standing list of consultants who have previously applied to the DSB for projects as advertised in Public Notices as Item 1, or from applicants who have filed a master file brochure with the Board, without public advertising.

(3) The Chairman of the DSB, or in his absence, the Vice Chairman or senior DSB member, upon receipt of the declaration by the Deputy Commissioner that an emergency exists; will select at least 6 semi-finalists as described above.

3.05: Voting by DSB Members for Selection in an Emergency Situation

(1) The Executive Director of the DSB shall compile the above information into a package for distribution and action by all the DSB members. Material shall be mailed if time permits. When possible, selection shall be made at the next scheduled meeting. When time or other circumstances do not permit, members may respond by mail.

(2) In those cases where the chairman or in his absence the vice-chairman or senior DSB member determines that immediate action is required on the basis of an immediate threat to health and safety, that person shall nominate at least 6 semi-finalists for the specific project to be acted on. Said Board member may direct the Executive Director to poll all available DSB members by phone and record their vote, tabulate the results, and forward the names of the 3 or more finalists to the Deputy Commissioner for his appointment in accordance with the Chapter 7, section 30G and 30H.

(3) The tabulation of the vote by DSB members for the 3 or more finalists to be submitted to the Deputy Commissioner shall be accomplished by crediting the designated point count of each member's vote to the firm so selected by each respective member. Every firm ranked 1st will be credited with 3 points, the 2nd ranked firm will be

credited with 2 points and 3rd ranked finalist will obtain 1 point. The firm obtaining the highest cumulative total of points will be ranked 1st, the next higher total will be ranked 2nd and the 3rd highest total point count will be ranked 3rd. All additional recommended finalists shall receive zero points.

(4) In the case of an equal total point count, the Board shall be repolled to determine the final ranking of the 3 or more finalists.

REGULATORY AUTHORITY:

811 CMR 3.00: M.G.L. Chapter 7, section 30K



THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE INSPECTOR GENERAL

ONE ASHBURTON PLACE • BOSTON 02108

JOSEPH R. BARRESI
INSPECTOR GENERAL

MEMORANDUM

TELEPHONE
(617) 727-9140

TO: State, County, and Municipal Agencies
and Independent Public Authorities

FROM: Joseph R. Barresi, Inspector General

SUBJECT: Code of Conduct for Public Employees

DATE: July, 1989

My Office is often called upon to investigate allegations involving relationships between public officials and private contractors, and I am frequently asked for guidance by individuals and agencies wishing to ensure that their conduct is above reproach. I have concluded that it would be helpful to develop a model code of conduct that could be adopted by public agencies throughout Massachusetts.

The enclosed Code of Conduct for Public Employees affirms the importance of maintaining the highest standards of ethical conduct in public service. Its purpose is not merely to ensure compliance with the letter of the law. This Code is considerably more detailed and, in some areas, more stringent than the State's conflict-of-interest law. The intent of the Code, which incorporates standards of conduct currently in force within a number of Federal and State agencies, is to encourage behavior which is -- and is perceived to be -- appropriate and ethical.

This Code covers five major areas: gifts and gratuities, reimbursement of travel expenses, honoraria, testimonial and retirement functions, and groundbreaking and dedication ceremonies. This Code is not all-inclusive. It is designed to supplement the State's conflict-of-interest law, Chapter 268A of the General Laws.

The conflict-of-interest law encourages public agencies to establish and enforce standards of conduct. I urge your agency to adopt this Code.

Code of Conduct for Public Employees

INTRODUCTION

The Massachusetts conflict-of-interest law, Chapter 268A of the General Laws, prohibits public employees from soliciting or accepting gratuities of substantial value for, or because of, their official duties. The law covers all State, county, and municipal employees, as well as employees of independent State authorities, districts, and commissions. The State Ethics Commission, which enforces the conflict-of-interest law, is authorized to impose civil fines of up to \$2,000 for each violation of the law and to recover damages. The law also carries criminal penalties, including fines and terms of imprisonment.

The conflict-of-interest law encourages public agencies to establish and enforce standards of conduct. This Code of Conduct is designed to supplement the conflict-of-interest law by setting standards of conduct for all employees with respect to relationships with individuals and entities with whom we conduct our official business. The purpose of this Code is to preserve the integrity of these relationships and to maintain the highest level of public confidence in the impartial performance of our duties.

This Code prohibits certain activities which could result in a conflict of interest or create the appearance of a conflict of interest. Exceptions to the Code's prohibitions are limited to specific circumstances in which an overriding public interest is served by the exception or in which the relationship in question is primarily personal.

Five major areas are addressed by this Code: gifts and gratuities, reimbursement of travel expenses, honoraria, testimonial and retirement functions, and groundbreaking and dedication ceremonies. This Code is not all-inclusive. It does not regulate every conceivable situation in which you may be offered gifts or other items of monetary value. It does not address other activities prohibited by the conflict-of-interest law, such as bribery, participation in official matters affecting one's financial interests or those of one's family or business, and misuse of one's official position. For information or advice on matters not covered by this Code, you should consult our Counsel; you may also seek guidance directly from the State Ethics Commission.

The Code of Conduct for Public Employees was developed by the Massachusetts Office of the Inspector General for public agencies throughout the Commonwealth. The Inspector General recommends that agencies adopt this Code. As used in the Code, "we" and "our" refer to the agency adopting this code; "you" refers to the agency's employees.

I. GIFTS AND GRATUITIES

A. General Restrictions

You may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other item of monetary value from a person, public agency, or private entity you know or have reason to know:

1. Has had, has, or is seeking to obtain contractual or other business or financial relations with us;
2. Conducts or is seeking to conduct business or other activities which are regulated or monitored by us; or
3. Has interests that may be or may give the reasonable impression of being substantially affected by the performance or nonperformance of your official duties.

Example: You may not accept a restaurant lunch from a consultant employed by a firm under contract to us.

Example: You may not accept a Christmas gift from a vendor seeking business with us.

Example: You may not accept a ticket to a sporting event from an individual with whom we have official business.

B. Exceptions

1. You may accept gifts in cases involving a family or personal relationship when the circumstances make clear that the relationship is the motivation for the gift.
2. You may accept nonalcoholic beverages, such as coffee or tea, from public or private entities.
3. You may attend and accept food and beverages at seasonal or celebratory functions, such as Christmas, birthday, or retirement parties, hosted by public entities.

4. You may accept food and beverages in connection with attendance at working meetings held in the office of a public entity.
5. You may accept food and beverages in connection with attendance at widely attended meetings or gatherings held by a private trade or professional association in an office or other business setting when you are attending the meeting or gathering in your official capacity for informational, educational, or other similar purposes.

Example: You may not accept food and beverages at a hospitality suite hosted by one or more private firms.

Example: You may not accept a restaurant dinner hosted by a private trade association, even if the event is informational and widely attended.

6. You may accept loans from banks or other financial institutions to finance proper and usual customer activities, such as home mortgage loans and automobile loans. If the bank or financial institution is an entity with which you have or might reasonably expect to have dealings in your official capacity, you must be able to demonstrate that the loan has been granted on current customary terms; you must also provide written disclosure of the loan to your supervisor.

7. You may accept unsolicited advertising or promotional materials of nominal value.

Example: You may accept an unsolicited, inexpensive promotional pen or calendar.

Example: You may not accept a leather portfolio.

II. REIMBURSEMENT OF TRAVEL EXPENSES

A. General Restrictions

You may not accept reimbursement for travel expenses from a person or entity which falls within the scope of Section IA, above.

B. Exceptions

1. If you deliver a speech or participate in a conference, we may elect to accept reimbursement from the sponsor of the speech or conference for your actual and necessary travel expenses. In this case, we -- not the sponsor -- will pay or reimburse you in accordance with our travel policy and bill the sponsor for the appropriate amount.
2. If we determine that employee travel is a necessary component of a vendor evaluation process, we may elect to require competing vendors to reimburse us for actual and necessary travel expenses incurred in connection with the evaluation. In this case, we -- not the vendors -- will pay or reimburse you in accordance with our travel policy. The publicly advertised request for proposals or bids must set forth our procedures for calculating and billing all competing vendors for the appropriate amounts.

III. HONORARIA

A. General Restrictions

You may accept honoraria or other monetary compensation from an outside source in return for a public appearance, speech, lecture, publication, or discussion only if all of the following conditions are met:

1. Preparation or delivery of the public appearance, speech, lecture, publication, or discussion is not part of your official duties;
2. Neither the sponsor nor the source, if different, of the honorarium is a person or entity which falls within the scope of Section IA, above;
3. You do not use office supplies or facilities not available to the general public in the preparation or delivery of the public appearance, speech, lecture, publication, or discussion; and
4. You do not take office time for the preparation or delivery of the public appearance, speech, lecture, publication, or discussion.

Example: You may accept an honorarium for a magazine article prepared outside working hours.

Example: You may not accept an honorarium for delivering a speech in your official capacity.

B. Exceptions

1. You may accept awards, certificates, or other items of nominal value given for a speech, participation in a conference, or a public contribution or achievement.

Example: You may accept a framed certificate of appreciation.

Example: You may not accept an engraved pewter bowl.

IV. TESTIMONIAL AND RETIREMENT FUNCTIONS

A. General Restrictions¹

1. You may not solicit contributions, sell tickets, or otherwise seek or accept payment for a testimonial or retirement function, or any function having a similar purpose, held for yourself or any other employee if the contributor is a person or entity which falls within the scope of Section IA, above, and the admission price or payment exceeds the actual per-person cost of food and beverages served at the function.

Example: You may not offer or sell tickets to a testimonial dinner to contractors doing business with us if the ticket price includes a contribution toward a gift.

2. You may not accept food, beverages, or gifts at any testimonial or retirement function, or any function having a similar purpose, if such food, beverages, or gifts are paid for or subsidized by a person or entity which falls within the scope of Section IA, above.

¹Chapter 268, §9A, of the General Laws currently prohibits anyone from selling, offering for sale, or accepting payment for tickets to, or soliciting or accepting contributions for, testimonial dinners or functions held on behalf of anyone employed by a law enforcement, regulatory, or investigatory agency of the Commonwealth or any political subdivision of the Commonwealth. The law carries a maximum fine of \$500.

Example: You may not accept a free admission to a retirement luncheon if the cost of your admission is paid, directly or indirectly, by one or more contractors doing business with us.

Example: You may not accept a retirement gift if the gift was paid for with the proceeds of tickets purchased by contractors doing business with us.

B. Exceptions

None.

V. GROUNDBREAKING AND DEDICATION CEREMONIES

A. General Restrictions

1. You may not request or require any person or entity which falls within the scope of Section IA, above, to sponsor or contribute to any groundbreaking ceremony, dedication ceremony, or similar occasion involving a public works project. If we determine that a groundbreaking or dedication ceremony for a public works project serves a legitimate public purpose, we may elect to fund such a ceremony. We may plan and pay for the ceremony. Alternatively, we may include the ceremony-related services in the construction bid specifications for the public works project.
2. You may not accept food, beverages, or gifts at any groundbreaking ceremony, dedication ceremony, or similar occasion involving a public works project if the food, beverages, or gifts are paid for or subsidized by a person or entity which falls within the scope of Section IA, above.

B. Exceptions

None.

1. The first step is to identify the problem. In this case, the problem is that the system is not working properly.

[illegible]

17. 10. 1983. 4

1890 - 1891

25-01-195. CONTINUED FROM PAGE 2

THE UNIVERSITY OF CHICAGO

[illegible]

to 1911, in 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592,

203617724 6

2012

